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CASES

OF

CONTROVERTED ELECTIONS

DETERMINED IN

The Eleventh Parliament

OF

THE UNITED KINGDOM,

BEING

THE FIRST SESSION

AFTER THE PASSING OF THE REFORM ACTS.

BY

A. E. COCKBURN, ESQ.

AND

W. CARPENTER ROWE, ESQ.

BARRISTERS AT LAW.

VOL. I.

LONDON:

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TEMPLE BAR.

TO

WILLIAM HARRISON, Esq. K.C.

AS A TRIBUTE OF RESPECT

TO HIS LONG EXPERIENCE AND GREAT LEARNING

IN THE LAW OF PARLIAMENT,

These Reports

ARE, WITH PERMISSION,

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THE EDITORS.

ADVERTISEMENT.

In first offering to the public a new series of Election Reports, the intermission of which, since the last publication by Messrs. Daniel and Corbett in 1821, has been found to be productive of great inconvenience to the profession, the Editors could have much wished to have followed the example of Mr. Douglas and Mr. Peckwell, in giving an introductory digest of the result and effect of the different determinations.

The extent, however, of the changes, both in principle and practice, which have been introduced into the Law of Elections by the Reform Act, is such, that it has been deemed desirable to lose no time in putting the profession in possession, at as early a period as possible, of the most important points as they severally arise. With this view therefore, the hitherto usual course of proceeding has been so far departed from, that instead of deferring to the termination of the session the publication of the entire decisions, it has been thought preferable to give at once a simple report of each case in a series of numbers, reserving, nevertheless, to the Editors, at the same time, an opportunity of supplying hereafter such further notes and comments as may serve to illustrate and complete the work.

With this object principally in view, it will be found that the cases contained in this the First Number have been taken somewhat out of the regular order of hearing, for the express purpose of throwing together the points more immediately bearing on the Reform Act; and with the further intent of effecting a better classification of the subject, the report of the Oxford Committee, which turned chiefly on the points of Agency and Bribery, has been reserved to another number, which it is proposed chiefly to devote to cases of that description.

The great question as to the jurisdiction of Committees to investigate the whole register, or those votes only upon which an issue

shall have been previously taken before the Revising Barrister, has been raised in three several instances upon the English Reform Act, and in each case, the Petersfield, Oxford, and Bedford Committees have severally held that the jurisdiction was so limited.

Upon the Irish Act, the provisions of which differ considerably from the English, a somewhat similar point has been discussed, namely, whether, except in certain cases of disqualification, which may have arisen since registration and which are specified in the Act, the Committee has any power to interfere with the register at all.

The Longford, Galway Town, Coleraine, and Galway County Committees decided in favour of the jurisdiction; the Carlow Committee decided the reverse.

The proceedings in these Irish Committees it will be obviously desirable to arrange and throw together in a distinct number; and this, as well as the preceding, is already in a forward state.

It now therefore only remains to give the following short abstract of the resolutions in the Salisbury Committee, which, as they have arisen immediately out of the Reform Act, it may be important to communicate immediately, in anticipation of the fuller report which will be given hereafter.

1. Where a notice of claim omitting any local description of the premises, but containing, nevertheless, the place of abode of the claimant, was received by the overseer, and the name was afterwards duly published by him on the church-door, with the omission supplied:—held, that the Revising Barrister was not justified in rejecting such notice for insufficiency.

2. The Committee further resolved, that they would now consider the voters so rejected as remitted to the same condition in which they stood before the decision of the Barrister, and accordingly called upon them to make good their qualification in evidence:

3. That these voters were good witnesses to prove before the Committee, in support of their own cases, all that they would have been admitted to prove before the Barrister; but that as the tender at the poll was altogether subsequent to registration, no individual could be allowed to prove his own tender:

4. That the inquiry before the Committee should be confined to the point gone into before the Barrister.

5. The Returning Officer having come to a decision upon the insufficiency of the answer given by a voter, to the third question

put at the poll, in accordance with the 58th section of the Reform Act, the Committee reviewed that decision and overruled it.

6. Certain tenders made at the poll having been entered at the time on slips of paper, and copied after the close of the election into the Poll Books in the mayor's presence: held, that the Poll Book alone was sufficient evidence of those tenders.

7. An objection having been taken to certain voters as paid agents of one of the Sitting Members and that Member having been called as a witness, held that he could not be compelled to prove those payments.

N.B. The Editors gladly avail themselves of this opportunity to express their obligations, both to the Counsel and Agents employed in the different Cases, for the great readiness and kindness with which they have invariably assisted them with the materials necessary for this work.

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REPORTS OF CASES

OF

CONTROVERTED ELECTIONS.

CASE I.

CITY OF BATH.

THE Committee was chosen on Thursday, Feb. 28, 1833, and consisted of the following members.

Thomas Law Hodges, Esq., *Kent, West,* (Chairman.)

John Hodgetts Foley, Esq. *Droitwich.*	Thomas Bewes, Esq. *Plymouth.*
Hugh Owen Owen, Esq. *Pembroke.*	Richard Greaves Townley, Esq. *Cambridge County.*
Williams Addams Williams, Esq. *Monmouth County.*	John W. Childers, Esq. *Cambridge County.*
John A. Murray, Esq. *Leith, &c.*	W. H. Hyett, Esq. *Stroud.*
Sir Jacob Astley, Bart. *Norfolk, West.*	William Bird Brodie, Esq. *Salisbury.*

Petitioners—Electors.

Sitting Member petitioned against, John Arthur Roebuck, Esq.

Counsel for the Petitioners—Mr. Harrison and Mr. Follett.

Agents—Messrs. Vizard and Leman.

Counsel for the Sitting Member—Mr. Maule.

Agents—Messrs. Sherwood and Thorpe.

Petition states the candidates.

The petition stated that, at the last general election, Major General Charles Palmer, John Arthur Roebuck, Esq., and Henry William Hobhouse, Esq., were candidates to represent the City of Bath in Parliament, and

that it being alleged that a majority of votes was tendered for the said General Palmer and the said J. A. Roebuck,

The return.

they were declared duly elected, and were returned members for the said city; that, at the time of the election, two persons having a right to vote thereat required that the said John Arthur Roebuck should take such oath of his qualification to appear as a candidate at the said election, or to be elected or returned, or to sit or vote, as a member in Parliament for the said city, as is directed by the provisions of the 9 Anne, c. 5, and that the mayor, who was the returning officer of the said city, administered an oath in that behalf to the said John Arthur Roebuck, according to the form of the following affidavit:—

The oath taken by the sitting member.

"I, John Arthur Roebuck, Esquire, do swear that I truly and bonâ fide have such an estate, in law or equity, to and for my own use and benefit, of and in lands, tenements, or hereditaments, over and above what will satisfy and clear all incumbrances that may affect the same, of the annual value of three hundred pounds above reprises, as doth qualify me to be elected and returned to serve as a member for the City of Bath, according to the tenor and true meaning of the act of parliament in that behalf; and that my said lands, tenements, and hereditaments, are lying and being in the parish of Camberwell, in the county of Surrey."

Estate situated in the parish of Camberwell, in the county of Surrey.

Which affidavit was afterwards duly certified into the Court of Chancery.

That the petitioners also had been informed and believed that there was no such parish in the county of Surrey, but that Camberwell was a large and populous village situate in the said county, and contained several parishes, or parts of several parishes; that there was a parish known by the name of St. Giles, Camberwell, and that there was also a parish, distinct for all ecclesiastical purposes, known by the name of St. George, Camberwell, all in the county of Surrey; that the said John Arthur Roebuck had not taken the oath with regard to his qua-

No such parish as Camberwell.

lification demanded of him by the said two electors, in conformity with the provisions contained in the said statute, inasmuch as he had not correctly or truly stated the parish, township or precinct in which the estate, in respect of which he claimed to be qualified to appear as a candidate, or to be elected or returned, was situate, and which parish, township, or precinct ought to have been particularly stated in the said oath, in pursuance of the directions in that behalf contained in that statute; that the petitioners, notwithstanding the vagueness and looseness of the description contained in the oath of the said John Arthur Roebuck, had made diligent search and inquiries in the said village of Camberwell, in the county of Surrey, but had been unable to find out that the said John Arthur Roebuck was seised either at law or in equity of any lands, tenements, or hereditaments in the said village of Camberwell, of the annual value of three hundred pounds above reprises, or of any other value whatsoever; and that the petitioners had reason to, and did believe, that the said John Arthur Roebuck had not at the time of the said election any such estate at law or in equity as qualified him to appear as a candidate, or to be elected or returned at the said election, or as qualify him to sit or vote as a Member of Parliament for the said City of Bath.

Vague and insufficient description, and consequently unsuccessful inquiries of petitioners at Camberwell.

The petition concluded with a prayer that the House would take the premises into consideration, and declare the said John Arthur Roebuck to be not duly elected, but his return to be null and void.

Prayer that the return of J. A. Roebuck, Esq. should be deemed null and void.

The material facts proved in this case were as follows:—

Facts of the case.

On the 10th day of December, 1832, General Palmer, John Arthur Roebuck, Esq., and Henry William Hobhouse, Esq., were proposed as candidates to represent the City of Bath in Parliament. After the usual forms had been gone through, which took up the day until about two o'clock, two of the electors requested Mr. Roebuck to take the qualification oath, as required by

9 Anne, c. 5, which oath Mr. Roebuck accordingly did take in the form set out in the petition. Upon this a poll was demanded for Mr. Hobhouse; the proceedings were adjourned until Wednesday the 12th, and, on Friday the 14th, the majority appearing to be in favour of General Palmer and Mr. Roebuck, those gentlemen were declared duly elected.

It further appeared in evidence, that on Saturday, the 8th of December, an application had been first made to Mr. Selby, a solicitor in London, to grant a rent charge of £300 per annum to Mr. Roebuck for life. The application was made by Mr. Graham, a friend of Mr. Roebuck; the abstract of the title was delivered on the Saturday, and on Sunday morning, the 9th, Mr. Selby, at the instance of Mr. Hanning, in whom he placed great confidence, and to whom he was under considerable obligations, wrote a letter to Mr. Roebuck, stating that the bargain was struck, and that the deed should be executed by eleven o'clock the following morning, the consideration being the sum of £5275, according to a calculation on Mr. Roebuck's life made by an actuary. This letter was given immediately to Mr. Graham, who set off forthwith, taking the letter with him to Mr. Roebuck at Bath.

On the Monday morning accordingly, at eleven, Mr. Selby executed the deed, which, in compliance with notice given to produce it, was now put in and read.

This instrument bore date the 10th of December, 1832, and purported to be a grant from George Selby to John Arthur Roebuck, in consideration of the sum of £5275, the receipt of which was therein acknowledged, of an annuity or clear yearly rent charge of £300, to be yearly issuing out of certain premises in the parish of Camberwell. Then followed a description of the parcels, some of which were said to be on lease; and then came the following interlineation—*the freehold and inheritance in reversion of all which hereditaments, hereinbefore particularly mentioned, has since the dates of the two several*

indentures of demise become vested in the said George Selby. Habendum to the said J. A. Roebuck *henceforth* for and during the term of his natural life, payable by two equal half-yearly payments on the 10*th day of June* and on the 10*th day of December*, the first payment to be made on the 10*th day of June next ensuing* the date thereof, &c. It appeared also, from the evidence of Mr. Selby, that at the time of the execution of this deed, on the Monday, a promissory note of Mr. Warburton's for the £5275 was given to him by Mr. Ashurst, Mr. Roebuck's solicitor, who was also solicitor for Mr. Hanning; and on the back of the deed there was a receipt for the consideration money, indorsed and subscribed by two attesting witnesses, who were now produced. It was proved on further examination, however, that on the subsequent Wednesday, the 12th, at three o'clock, p. m., the deed was again brought to Mr. Selby by Mr. Ashurst's clerk, with the above-mentioned interlineation, inserted by the advice of a conveyancer; that it was then re-executed by him, and re-attested by the same witnesses; and that no new stamp was affixed to the instrument. Up to this time Mr. Selby had never seen Mr. Roebuck; he stated himself to have acted throughout on the faith he put in Mr. Hanning and in Mr. Warburton's note. That note he paid in at Messrs. Prescott and Grote's bank, and it was not until a month after, and after he had expressed an anxiety to be indemnified against Mr. Roebuck's claim, that he went to that bank by appointment, when, in the presence of one other person in the private business room, the consideration money was paid over to him by Mr. Roebuck in Bank of England notes, and the promissory note was given up. The money, £5275, Mr. Selby stated himself to have then paid in to his own and his brother's account at the Bank of England, where the greater part of it still remained.

There was a mortgage (for £1500) on the property on which the rent charge was secured; but the value of the

member was represented still to exceed considerably what was necessary to meet the enquiry.

After this much had been proved, the petitioner's counsel proposed to show, that they had sent to Camberwell to make inquiries, and had been unable to discover any such property as that described in the oath as there belonging to Mr. Roebuck. But to this it was objected by the counsel for the sitting member, that although there was an allegation of that kind in the petition, no such point had been opened by counsel: and that it was an admitted rule of practice before committees, that no point could be gone into in evidence which had not been opened.

Rule of practice. Counsel cannot give evidence upon a charge which has not been opened.

Petitioner's counsel then stated, and it was admitted, that it had been opened that Mr. Roebuck having delivered in (under the resolution of the House, 21st November, 1717,) (a) an insufficient statement of the particulars of his qualification, might, from the difficulty thus thrown in the way of inquiry, have to thank himself for the inconvenience of a petition.

(a) The resolutions above referred to are the following. Resolved,

1. "That notwithstanding the oath taken by any candidate at or after any election, his qualification may afterwards be examined into."

2. "That the person whose qualification is expressly objected to in any petition relating to his election, shall, within fifteen days after the petition received, give to the clerk of the House of Commons a paper signed by himself, containing a rental or particular of the lands, tenements and hereditaments whereof he makes out his qualification, of which any person concerned may have a copy."

3. "That of such lands, tenements and hereditaments whereby the party hath not been in possession, for three years before the election, he shall also insert in the same paper from what person, and by what conveyance or act in law, he claims and derives the same; and also the consideration if any paid, and the names and places of abode of the witnesses to such conveyance and payment."

4. "That if any sitting member shall think it to question the qualification of a petitioner, he shall, within fifteen days after the petition received, leave notice thereof in writing with the clerk of the House of Commons; and the petitioner shall in such case, within fifteen days after such notice, leave with the said clerk of the House the like account in writing of his qualification, as if required from a sitting member."

Mr. *Maule*, for the sitting member, then further contended, that even upon this latter statement, the matter thus opened by the counsel for the petitioner was not contained in the original petition, but only in the particulars subsequently delivered in. Now as in an action at law no inquiry can be had as to matters which have occurred since the declaration was filed, so here nothing that passed or was done after the petition was presented is within the jurisdiction of the Committee; they cannot travel out of the record; and the reason is obvious, for if it were otherwise a party would at the moment be called on to answer matters of which he has not had the slightest notice. But it is said that these particulars are delivered in according to a resolution of the House: granted that it be so: then if they are insufficient there is a remedy by applying to the House itself, as upon a breach of its order. But the remedy lies not with the Committee: they sit here to examine specific allegations, and those allegations are to be looked for in the petition, and in the petition alone. This evidence, therefore, is not admissible. Argument on the point of practice.

Mr. *Harrison* for the petitioners:

There is an allegation in the petition of the vagueness and insufficiency of the description contained in the sitting member's oath; and the particulars subsequently delivered in are more vague still. Now those particulars are so intimately connected with the description in the oath, and, in fact, are so entirely meant to be an expansion of the more concise statement therein contained, that they may be taken to be one and the same matter, just as the particulars of a plaintiff's demand are taken to be part of the very declaration which constitutes the demand itself. The vagueness then of these particulars was opened, and as they are referable to the description in the oath contained in the petition, the opening of the one is, in fact, the opening of the other.

Then as to the argument that the sitting member may

The opening of an imperfect description of the qualifications in the particulars given in under the standing order of 1717, is a sufficient opening to let in evidence in support of an allegation in the petition of a similarly imperfect description embodied in the candidate's affidavit.

thus be taken by surprise, the very fact of being obliged to deliver in such a statement is, in itself, sufficient notice that it will probably be inquired into. Upon these grounds, therefore, the proposed evidence should be received.

The Committee resolved that the petitioners's counsel should be at liberty to go on with the examination.

It was then proved that inquiries had been made by one Thomas Ford, at Peckham and at Camberwell, and that of the houses set out in the particulars, some were incomplete and some uninhabited, but that they amounted in all to a considerable number.

This evidence closed the case.

Argument on the case.

Mr. *Harrison*, for the petitioners, then argued as follows:

1. That Mr. Roebuck was not, on Monday the 10th December, seised of or entitled to such an estate as is required by 9th Anne, c. 5, s. 1, as a qualification for a burgess to sit in Parliament.

2. That unless he were so entitled at the time of his taking the oath at Bath, he could not have duly complied with the provisions of that statute.

3. That even if he were entitled from the period of the re-execution of the deed, still that the majority would be with Mr. Hobhouse; but that, in point of fact, he was not so entitled at any time before his election and return, the whole transaction being colourable and informal.

1. Admitting, for the sake of argument, the sale by Mr. Selby to have been a boná fide transaction, still there is no ground for asserting that that estate passed to Mr. Roebuck on the 10th of December.

No writing has been produced which would have given him an equitable title; and as to the deed put in, it is clear, from the circumstances of the case, that it could not operate as a valid conveyance of the legal estate until its re-execution. The importance attached by the parties to that proceeding, is obvious: not satisfied that, without

some addition, the language of the deed would sufficiently ensure the legal estate, they take the advice of a conveyancer, the proposed alteration is inserted, and, without procuring another stamp, the same instrument is formally re-executed. Now authorities abound to show that a material alteration in a deed makes it altogether inoperative and void, and here the line interpolated after the first execution, is in the granting part, and that being so, it is impossible to say that a sufficient estate passed by this instrument until its re-execution on the Wednesday.

But supposing the first execution on the 10th to have been good, and that a legal estate was conveyed by that transaction, when did that estate commence? The words of the habendum are, "to have, hold, receive, and take the said annuity or yearly rent charge of £300, to the said J. A. Roebuck and his assigns *henceforth*:" and it goes on to state, that "it shall be payable by two half-yearly payments, on the 10th day of June and on the 10th day of December." Now there being in law no such thing as a fraction of a day, the deed having been executed on the 10th, the word "henceforth" must be taken to mean, from the termination of the 10th, or, in other words, from the commencement of the 11th; an interpretation confirmed, moreover, by the day fixed for the first half-yearly payment, namely, the 10th of June. Payment then on the latest possible hour of that day would be sufficient; and thus, reckoning from the end of the 10th of December to the 10th of June, it is obvious that the rent charge did not begin to run, and that Mr. Roebuck had no estate in it until the 11th.

2. But unless Mr. Roebuck were entitled to such an estate at the time he took the oath on the 10th, he could not have complied with the provisions of the 9th Anne, c. 5.

The object of that statute was to enable the electors, at the time of the election, to ascertain whether those

offering themselves as candidates were duly qualified for representatives.

Now since the passing of the Reform Act, the day of nomination is the day of election. Notice is given of it as such; and if a poll be demanded, it may, by 2 W. IV. c. 45, s. 67, commence on the day so fixed for the election. The day then fixed for Bath was the 10th of December. At two o'clock on that afternoon, Mr. Roebuck was called upon on the hustings to take the oath; and upon the strength of the information received from London, that the deed was to be executed there on that morning at eleven, that oath, it seems, he did take. But if either of the preceding arguments, as to the time when his interest in the rent charge actually began, have any weight, it is clear that at the time he took that oath he had no such estate.

Had he then refused to subscribe the affidavit, as had he known the defect in the conveyance must have been the case, his disqualification being thus notoriously published, he must have been considered, for the purpose of that election, as a person altogether not *in esse;* and, there being no third candidate, General Palmer and Mr. Hobhouse must have been forthwith returned. Mr. Roebuck's situation would then have been very similar to that of Sir W. C. Fairlie, in the Leominster case, * who, having refused to take the oath, was held to be incapable of establishing his qualification by any subsequent arrangement. If then this would have been the effect of Mr. Roebuck's refusal, and he ought to have refused, he has no right now to be placed in a better situation, by his own wrong act, namely, by taking the oath, when, at the same time, he had no sort of qualification.

3. But even if a qualification did accrue to Mr. Roebuck on the re-execution on the Wednesday, which, there having been no new stamp affixed to the deed, is dis-

* Corbett and Daniel, p. 8.

puted, still the return ought to have been in favour of the petitioner.

It was conceded in the Leominster case, that in the event of a qualification thus acquired during the election, all votes given to the candidate prior to that acquisition must be deemed null and void; and, if so, a deduction being made of all who voted for Mr. Roebuck before the afternoon of Wednesday the 12th, the majority would be in favour of Mr. Hobhouse.

In addition, however, to the objections already advanced, in point of fact the whole of this transaction is colourable, and the standing orders of the House have been in no respect complied with.

Here is an annuity granted by a Mr. Selby, an attorney, and no valid consideration of any kind at the time passes. Until the money was actually paid, there would be no legal conveyance and no good title. Mr. Roebuck had no actual possession, and for a month after, until the meeting at Messrs. Prescott and Grote's, the purchase-money not having been paid over would remain as "an incumbrance" upon the grant, according to the very words of 9 Anne, c. 5, s. 1, and extinguish, during that period, any beneficial interest, even if such an interest had ever passed to the grantee. This also was decided in the case of Sir W. C. Fairlie.* The standing order of November, 1717,† moreover, requires that a sufficient particular of the lands and hereditaments constituting the qualification, and that the names and places of abode of the witnesses to such conveyance and payment, shall be given in by the sitting member within fifteen days after the petition has been received. Now here no witnesses of any payment have been produced at all, and the particulars are so unsatisfactory that no sufficient inquiry could be made into the value of the property. Upon all these grounds, therefore, the petitioners are entitled to demand that Mr. Roebuck's return be avoided.

* Cor. and Dan. p. 9. † Orme, 278.

Mr. *Maule* for the sitting member. This petition is greatly calculated to mislead, inasmuch as the chief allegations seem to be, that Mr. Roebuck has not taken the oath in conformity with the statute, because he has not accurately described the parish.

Now, as to the description, it was amply sufficient for all purposes of notice, and the particulars further were sufficiently accurate to justify the sitting member in contending that the petition should be declared frivolous and vexatious.

Then, as to the main point, namely, the question of qualification, the law has been incorrectly stated by the counsel for the petitioners. The provisions of the 9 Anne, c. 5, are clear and express.

The first section describes the qualification necessary, and enacts, that in the event of the candidate "not being at the time of the election and return seised or entitled to such an estate in lands, tenements, or hereditaments as is thereinbefore required, such election and return shall be void." There is nothing, then, in the policy or the words of this provision to prevent a candidate from sitting, provided he has the requisite qualification before the final close of the poll; and in the Bristol case, 1786,* it was decided that a qualification executed during the poll was sufficient.

But it is said, that some alteration has been introduced into this part of the law by the Reform Act: this statement, however, is also incorrect. The day fixed for the nomination, or the commencement of the election, if a contest take place, is not necessarily even the first day of polling (see 2 Wm. IV., c. 45, s. 67,) much less the final day of election. Here a poll was demanded, and there were three candidates, neither of them notoriously disqualified. In the Leominster case, on the contrary, there was not only a notice that Sir W. C. Fairlie was disqualified, but he himself had published that fact by

* Simeon, 51. See also Rogers on Elections, p. 69.

refusing to take the oath; and it was then contended that, under those circumstances, the returning officer was bound to treat him as not *in esse*, to return the other two candidates, and close the election. The present case, however, is essentially different. No notice of any kind is given, and on the oath being proposed, Mr. Roebuck immediately takes it. Now even if he had possessed no qualification at that time, the 5th section of the act, which makes this oath essential, is perfectly silent as to the election being avoided under such circumstances, and for a very good reason. If the oath be so taken through inadvertence or mistake, the member conscientiously believing that he had a qualification at the time, to prevent him from discharging a duty undertaken for the public benefit would be a harsh measure; if it be so taken knowingly and fraudulently, there is in the courts of law another and a more fitting remedy. It is the refusal alone to take this oath which, by the 7th section, is visited by a deprivation of the seat.

But to rely on either of these points is perfectly unnecessary, since it has been amply proved that Mr. Roebuck had not only a sufficient estate at the time of his return and election, but that he had also a perfectly good estate, equitable and legal, at the time of taking the oath in question.

1. There is no doubt but that the moment Mr. Roebuck was put in possession by Mr. Graham of Mr. Selby's letter, that he might have immediately proceeded to enforce a specific performance of the bargain; and as there is no more familiar instance of an equitable estate than a contract to purchase not actually carried into execution, that gentleman must be entirely acquitted even of swearing precipitately in this matter.

2. Then as to the transaction of the deed. At the time of its first execution on the Monday, at eleven o'clock, that instrument was perfectly valid for the purpose of passing the rent-charge in question; and even if it became subsequently invalid, the alteration was not made until

the Wednesday, being two days after the oath was taken. But that alteration amounts to nothing: the words introduced are simply a recital that Mr. Selby was seised in fee of a certain part of the premises, and such an introduction makes the grant neither better nor worse: an alteration to be material must enlarge the grant itself or the subject of the grant; but here, as neither the one nor the other was done, this interlineation, in point of fact, created no necessity of any kind for a re-execution.

But it has been contended that even if the deed were formally correct, no estate passed to the grantee under the word "*henceforth*" until the Tuesday.

It is true that the law does not recognise a fraction of a day, but it is also true, that the law, in construing a deed, always endeavours to give effect to the intention of the parties, and more especially holds to that interpretation which is most strongly against the grantor. If, therefore, this proposition proves anything, it proves that the grant, having been executed on the Monday, must take effect from the earliest period of that day. The delivery, however, is the material point to look to, and as that took place at eleven in the morning of the nomination, it most clearly vested the rent-charge in Mr. Roebuck before the oath was taken at two.

Then as to the other objections, nothing could be more loose or unsatisfactory than the evidence of inquiry made by the petitioners at Camberwell. On the other hand, it is proved that the property consisted of ground rents, one of the best of securities, and that those rents are more than enough to satisfy the mortgage and the rent-charge. It is also in evidence, that the indorsed receipt for the consideration money was duly attested, the names of the attesting witnesses were given, and they have been themselves examined, and that fully satisfies the standing order of the House. Mr. Warburton's note did in fact pass at that time, and even had it not been given, the purchase money could not have remained as a charge upon the estate granted, extinguishing Mr. Roe-

buck's beneficial interest, since there can be no charge on an incorporeal hereditament.

The consideration then being afterwards duly paid at Messrs. Grotes and Prescott's, the transaction was a *bonâ fide* transaction; it conveyed an estate both equitable and legal; that estate was in Mr. Roebuck both at the time of his return and election, and at the time of his taking the oath on the hustings at Bath; the 1st and 5th sections of the 9 Anne, c. 5, have both been fully complied with, and the sitting member, it is therefore submitted, is fully entitled to be declared duly elected.

The Committee resolved that John Arthur Roebuck, Esq., one of the sitting members for the City of Bath, at the time when he took the qualification oath, on the 10th of December, 1832, was duly qualified as a citizen to serve in this present Parliament for the City of Bath, and that neither the petition nor the opposition to it appeared to be frivolous or vexatious.

CASE II.

BOROUGH OF PETERSFIELD.

THE Committee was chosen on Tuesday, February 26th, and consisted of the following members.

Hon. George Lamb, *Dungarvon*, (Chairman).

Sir George Caley, *Scarborough.*	Edward W. W. Pendarves, *Cornwall, West.*
Henry Handley, Esq. *Lincolnshire, parts of Kesteven.*	Sir W. Chaytor, *Sunderland.*
Edward Buller Esq. *Staffordshire, North.*	Robert G. Throckmorton, Esq. *Berks.*
Hon. Henry S. Jerningham, *Pontefract.*	Sir John Johnstone, Bart. *Scarborough.*
R. A. Slaney, Esq. *Shrewsbury.*	J. Wedgewood, Esq. *Stoke upon Trent.*

Petitioners—Hylton Joliffe, Esq. and Electors.
Sitting Member—John George Shaw Lefevre, Esq.
Counsel for the Petitioner—Mr. Harrison, Mr. Serjeant Merewether, Mr. Follett and Mr. Hope.
Agents—Messrs. Currie, Home and Woodgate.
Counsel for the Sitting Member—Mr. Pollock and Mr. Serjeant Heath.
Agents—Messrs. Lowdham, Parke and Freeth.

The petition stated, that according to the last determination of a Committee of the House, upon a petition of appeal, in 1821, the right of election in the borough of Petersfield was determined to be "in the freeholders of land, or ancient dwelling houses, or shambles; or dwelling houses or shambles built upon ancient foundations within the said borough, such lands, dwelling houses, or shambles not being restricted to entire ancient tenements:"

That at the election held on the 30th of July, 1830, for burgesses to serve in parliament for the said borough, at which Sir William George Hylton Joliffe, Bart., Gilbert

East Jolliffe, Esq., Henry John Herbert, commonly called Lord Porchester, and John Ogle, Esq. were candidates, certain persons tendered their votes for the said Lord Porchester and John Ogle, Esq., claiming to vote as shareholders in the Petersfield Improvement Association, in respect of shares or interests in a piece of freehold land within the said borough, known by the name of the Cricket-field; but that such votes were rejected by the returning officer, and the said Sir W. G. H. Jolliffe and G. E. Jolliffe, Esq. were declared duly elected, and returned accordingly:

The petition states the ancient right of voting.

That at a former election votes were tendered in respect of certain shares in the Cricket-field, but rejected.

That the said Lord Porchester and John Ogle, Esq. petitioned the House against such return, and on the hearing of such petition, attempted to establish that the votes so tendered on their behalf were good votes, and ought to have been received by the returning officer at the said election in the said year 1830; but that the Committee, on hearing evidence in support of such votes, and the arguments of counsel upon two of such votes, separately and successively, after a long and patient investigation, determined, on the 19th and 22d days of March, 1832, respectively, that both of such votes were bad, and had been properly rejected by the returning officer, the Committee being of opinion that such votes were fraudulent, and not *bonâ fide;* that the counsel for the petitioners thereupon admitting that all the remaining persons who claimed in respect of shares in the said association stood on the same grounds as the two on which the Committee had already determined, declined attempting to establish the same; that Sir W. G. H. Jolliffe and G. E. Jolliffe, Esq. were thereupon declared by the said Committee to have been duly elected:

That they were again rejected by a committee.

That in 1832 the different overseers within the said borough of Petersfield having made out their lists of voters, according to the provisions of the Reform Act, William P. Taunton and George Warry, Esqrs. as barristers appointed to revise the lists of voters for the said borough, held courts for that purpose, and that divers

That the names of persons claiming to vote in respect of shares in the Cricket-field were inserted in the lists by the revising barristers.

persons whose names had been omitted in the said lists, appeared before the said barristers and claimed to have their names inserted therein; that it appeared before such barristers that the qualifications in respect of which several of such persons claimed, consisted of shares or interests in the said Cricket-field, to which they claimed to be entitled as shareholders in the said Petersfield Improvement Association; that it appeared in evidence, and was admitted by such last-mentioned persons, that their qualifications and right to vote rested on the same grounds as that of the two persons hereinbefore mentioned to have claimed to be entitled to vote at the election for the said borough in the year 1830; and it further appeared that such claimants, in fact, were persons whose votes the counsel for the petitioners declined to attempt to establish after such last-mentioned determination of the Committee of the House, but that the barristers, notwithstanding such last-mentioned determinations, decided that the names of such several persons ought to be inserted, and did in fact insert them in the said lists of voters for the said borough:

That the names of other persons not entitled to vote, were also inserted by the barristers, and that the register was formed from all those lists.

That the said barristers also decided to be entitled to be inserted, and did in fact insert, in the said lists of voters for the said borough, the names of divers other claimants, of whom some claimed in respect of qualifications which it appeared in evidence were fraudulent, occasional, and not *bonâ fide;* and others claimed in respect of qualifications which it also appeared in evidence were not of the clear yearly value of ten pounds, although such last-mentioned persons claimed to be entitled only in respect of rights conferred by the late act for the amendment of the representation of England and Wales: that the register of voters used and acted upon at the time of the said last election for the said borough, was formed from the said lists of the voters for the said borough, revised as aforesaid by the said barristers, and that in consequence of their decisions (as well those hereinbefore mentioned, as also of others,) the names of divers

persons who voted at such last election were improperly inserted in such register, and such persons illegally and improperly voted at such election:

That at the last election the persons above mentioned and others improperly placed on the register voted for the Sitting Member.

That at the said last election for a member to serve in this present parliament for the said borough, the petitioner, the said Hylton Jolliffe, and John George Shaw Lefevre, Esq. were the only candidates; that a poll being demanded and granted, was proceeded on; and that the said several persons hereinbefore mentioned to have been improperly inserted in the said register of voters for the said borough, and other persons who had been improperly inserted and retained in the said register, were allowed to vote, and did in fact vote, for the said John George Shaw Lefevre, and that divers other persons not entitled legally or *bonâ fide* to vote in the choice of a member to serve in parliament for the said borough, were also allowed by the returning officer to vote, and did in fact vote for the said John George Shaw Lefevre. There were also charges of bribery and treating, and an allegation that by the above mentioned means the return of J. G. S. Lefevre was procured, which return was illegal and void.

Charge of bribery and treating.

Prayer—that the petitioner Hylton Jolliffe might be declared duly elected, and that the election and return of J. G. S. Lefevre might be declared null and void.

Prayer.

Statement of the case for the petitioners.

The counsel for the petitioners abandoned the charges of bribery and treating, and opened a case of a general scrutiny, with a more especial reference to the votes called the Cricket-field votes. He stated that these votes had been created in consequence of the determination of the House in 1821, by which the right of voting in Petersfield was not confined to *entire* antient tenements. A company was consequently formed called "The Petersfield Improvement Association," the shareholders in which were, according to the allegation in the petition, said to have a freehold interest in this field, and in that respect first claimed to vote in the election of 1830.

That the two votes stated in the petition to have been

held bad by the Committee in 1831, were those of Sir James Macdonald and Mr. Mellish, and that it was in consequence of that decision that further proceedings were then abandoned: that in a subsequent election that determination was so far acquiesced in that no petition was presented against the decision of Mr. Thesiger, the then assessor, by whom votes of that nature had been rejected; but that at the registration in 1832, the case of these Cricket-field voters was again brought forward, and upon the evidence then tendered, the barrister, W. P. Taunton, Esq. was of opinion, that their right to be registered had not been disproved: eight votes therefore of this kind were consequently tendered and received at the election, and the result was a majority of one on the gross poll against Mr. Jolliffe. This decision then of the revising barrister, it was now the object of the petitioner to impugn, and the method of proceeding proposed, was to take the name of a voter who would be proved to have claimed under the same right which had been held bad in 1831, in the cases of Sir James Macdonald and Mr. Mellish, and that thus the question would be fairly raised.

William Holdaway's case.

They then proposed to take the case of William Holdaway, described in the poll book of 1832, thus:—

"William Holdaway, High-street, Petersfield, share in the Cricket-field, Petersfield, voted for Mr. Lefevre."

The poll-book of 1830 was then put in, from which the following extract was read:—

"No. 10. Sir James Macdonald, Bart., Woolmer Lodge, Hants, portion of freehold recently conveyed by Mr. Hector, called the Cricket-field." In a column on the one side was written the word "objected." In a column on the other side the word "rejected."

From the same book the following other entries were read:—

"William Holdaway, yeoman, Petersfield Cricket-field, tendered for ——.

"Thomas Mellish, gent., Godalming, share in Cricket-field, tendered for ——."

Parol evidence of a third party not admissible to prove the nature of a discussion before a former committee.

The petitioner's counsel then proceeded to examine Mr. Gurney, the short-hand writer, as to the Petersfield Committee, which sat on the 16th March, 1831, and put this question, "Was Sir James Macdonald's vote then discussed?"

To this the counsel for the Sitting Member objected that this was not the proper mode of giving evidence of what passed before a former Committee; that where parties are living who then gave evidence, or were heard upon the point, they should be produced here again, and that what passed before a Committee in 1831, could be by no means conclusive before a Committee in 1833.

The counsel for the petitioners argued that if it could be proved that these Cricket-field votes were held bad by a Committee in 1831, they must be considered to have been bad at the time the Reform Act passed, and would thus not have been reserved under the 32d and 35th sections of that act, which reserved only franchises then existing, and therefore claimed that the nature of the discussion in 1831 should be inquired into, and contended that this would be best effected by putting the proposed question.

The Committee resolved, that the discussions of counsel in a former Committee could not be given in evidence.

It was then admitted that the votes of Sir James Macdonald and Mr. Mellish had been rejected by the Committee in 1831.

The counsel for the petitioner upon this proposed to read from the minutes of the Committee of 1831 the deed under which Sir James Macdonald and Mr. Mellish claimed to vote in 1830, and under which Holdaway claimed to vote at the last election.

The counsel for the Sitting Member submitted that the original deed must be produced.

The Committee decided that an identity must first be shown between the title of Sir James Macdonald and that of Holdaway, before any further step could be taken.

Mr. Greetham, a director of the Peterborough Association, was now called upon to produce the deed in pursuance of the warrant served on him; but he denied having it in his possession, protesting at the same time, that even if it had been, he was not compellable to produce it.

Notice to produce deed having been served on the directors of the Peterborough Improvement Association, on the voter and the sitting Member, held, that a sufficient case had been made out to let in secondary evidence of the contents thereof entitling the voter to the share in the company in respect of which he claimed to vote.

Evidence was next given that notice to produce the deed in question had been served on the six other directors of the same association, upon the voter Holdaway, and on the sitting member, Mr. Lefevre. The sitting member was then called on to produce the deed, but it was stated that he was a perfect stranger to it and never had it.

It was then proved by Mr. Gurney, that the passages from the deed which appeared on the minutes of 1831, were copies of the extracts read at that time, and it was also proved that the original deed had been produced before the revising barrister by Holdaway's attorney, in support of Holdaway's vote. After which it was again proposed to put in and read the minutes.

To this it was objected by Serjeant *Heath*,—1. That the notices to the directors were only notices to so many strangers: the practice of the courts is to serve a *subpœna* upon them, and then the production is in the discretion of the judges. 2. That with regard to the notice to the persons themselves, there was no proof that at the time of the notice given the deed was in their possession, and that such proof was essential.* 3. That it had been in various instances decided, that trustees were not compellable to produce their deeds, and that the East Grinstead Committee had extended that protection to voters also.†

Mr. Wilde, Serjeant, contra, contended,—1. That although it was positively true that trustees could not be called on to produce their deeds, still that, after due notice to them, it was the practice to go into secondary evidence to supply the deficiency.‡ 2. That Holdaway

* 1 Phillips on Evidence, p. 221.
† 1 Peck. 307.
‡ Anonymous case. 2 Lutwyche 1568. Vaughan's case. 2 Peck. 131.

himself, as long as his vote was under consideration, must be taken to be clearly a party. It had been shown that the lease was recently in his attorney's possession, which was tantamount to his; and then there is authority for saying, that he not having produced the deed after notice, other evidence of its contents might now be given.*

The Committee resolved, that the counsel for the petitioners had entitled himself to give secondary evidence of the right in respect of which Holdaway claimed to vote before the revising barrister.

Extracts of a deed transcribed into the minutes of a former committee, and parol evidence to supply the other parts tendered as secondary evidence.

Parol evidence was then given that a deed having the same appearance, the same attesting witness, the names of many of the same parties, and amongst others the names of Sir James Macdonald and Mr. Mellish, and in several other respects identical, had been produced at the election in 1830, before the Committee in 1831, and in support of Holdaway's vote before the barrister in 1832. With respect to the extracts in the minutes of 1831, it was ascertained that they were not taken down at the time, but were only copied by a clerk at Mr. Gurney's office, from a brief copy supplied by the solicitor, and that that clerk could not be produced to verify them, nor were they proved to have been a regularly examined copy. There was no doubt, nevertheless, that they had been so transcribed in the usual course of business in the short-hand writer's office; that they had been placed in the hands of the Committee the subsequent day, and had been commented on, four days after, by Mr. Adam, who was counsel on that occasion, and been examined by the agent who was familiar with the deed itself. It being admitted, however, that those extracts did not form more than an inconsiderable part of the context, it was proposed to supply the deficiency by parol evidence.

Heath, Serjt., upon this, again objected that these

* See Herefordshire case, 1 Peck. 210.

Argument upon the admissibility of this evidence.

extracts from the minutes had not been originally taken in such a way as to give them any authority as evidence; that they were no more than a copy of a copy transcribed in the short-hand writer's office, and that no clerk had been produced to verify them, even such as they were; that it was clear also that they did not amount to a fifth part of the original deed, and if so, how could the Committee judge of the tenor of that instrument from such imperfect evidence. Then as to the proposition to supply the deficiencies by parol, and thus make up the whole, such a course of practice could not be for a moment entertained; in point of fact parol evidence ought not to be received at all; no such testimony could be given even by a trustee without the permission of his *cestui que trust*. This was decided by the Middlesex Committee:* the first case there reported is that of Joseph Lifford, and that of Henry Davison is stronger still: there the Steward of Lincoln's Inn, Mr. Lane, was not permitted to produce the documents of that society, or to be examined as to their contents, for the purpose of impeaching the title of voters claiming under them: so again the steward of a manor† was protected to the same extent. All these cases go to show that such evidence is not admissible.

Merewether, Serjt., answered, that each of the instances cited, on examination, would have involved a breach of trust, but that here it was proposed to call a third party, who had, without being in a situation of confidence, accidentally had occasion to peruse the deed, and that such testimony would be good *primâ facie* secondary evidence, which might be impeached or not, by the production of the deed by the counsel for the sitting member, at his discretion. Then as to the authenticity of the minutes; those extracts had been copied in the usual way of business; they had been forthwith laid before the Committee

* 2 Peck. 119. † Ibid.

as their record, commented on by counsel, the short-hand writer was sworn to their accuracy, and they had been regularly filed for the use of the House. The Committee therefore would not invalidate and repudiate their own record.

In reply to a question put by the Committee to the short-hand writer, it was then stated to have been the practice to refer to the minutes of former Committees, and that such a reference was made by the Petersfield Committee in 1831 to the minutes of the Petersfield Committee which sat in 1820.

The proposed evidence admitted.

The Committee, after deliberation, resolved that the counsel for the petitioners be at liberty to give parol evidence of the contents of the deed, and to put in the extracts read before the Committee of 1831.

Substance of the deed.

A person who had had frequent opportunities of seeing the deed in question was then called to depose to its contents, and the extracts from it inserted in the minutes of the former Committee were read. It was a conveyance by lease and re-lease, bearing date the 21st and 22d July, 1830, bound up together in a book. The re-lease was of five parts, and it first recited, that the town of Petersfield wanted improvement; that great benefit would arise to it by the building of respectable houses, schools and institutes for instruction and moral improvement; that there were many fit spots for building such in the neighbourhood; and that an association had been formed for the above purposes, of which association the persons of the third and fourth parts were members, and those of the fourth part were managers. It then went on to state, that it had been proposed to raise the sum of £7500 in 1500 shares of £5 each, and had been agreed that the Cricket-field should be purchased for those purposes from Mr. Hector; that Mr. Hector, in consideration of £1000, conveyed one moiety of this field to the parties of the third part, of whom there were 250, in equal shares, and the other moiety to the parties of the fourth part, in

trust to assign it out to future shareholders; and that Sir J. Macdonald, Mr. Mellish and Holdaway were parties of the third part to this deed. The resolutions of the Committee of 1831 were also read, declaring that the votes of Sir J. Macdonald and Mr. Mellish should not be put on the poll. It was then further proved that Mr. Holdaway's vote, and those of all claiming similar interests with him in the Cricket-field, were rejected by the assessor to the returning officer at the election in 1831; that a petition was presented by Mr. Ogle and Mr. Marsh, the candidates at that election, complaining of the rejection of those votes, but that it was afterwards abandoned: it was stated, however, that Mr. Ogle died just before the day appointed for taking the petition into consideration.

It was further proved that Holdaway's case was discussed before the revising barrister in 1832, but there was no proof that the above minutes were then tendered in evidence in that case: they were tendered in the course of the registration, but an objection having been taken that they were not admissible, they were rejected by the revising barrister, who held, that although the minutes might be evidence before him to prove the fact of the rejection of Sir James Macdonald's and Mr. Mellish's votes in 1831, that they could not be admitted to prove the grounds on which the Committee then decided. This closed the evidence in Holdaway's case, upon which

ument upon vote.

Merewether, Serjt., for the petitioners, contended that the vote must be struck off the poll. It was not now necessary to consider whether the minutes had been rightly or wrongly rejected by the revising barrister; the case did not turn altogether upon that. Here we have it proved that Holdaway at the last election claimed under the same deed under which Sir J. Macdonald's claim had been founded on a former occasion, and which claim was then rejected by the Committee. Unless, therefore, it can be shown that some alteration had oc-

curred since that time to make such a title to vote valid, the decision in 1831 must govern the present case also. But the evidence in point of fact went to show that no such alteration had taken place, since votes of the same nature had been rejected by the assessor at a subsequent election, and his decision remained unreversed. That being so, was this a right of voting which could be said to have existed at the time of the passing of the Reform Act? and if not, then it did not fall within the 33d section of that act, by which alone such ancient rights are preserved. The decision of the revising barrister appeared to have been influenced by considerations which, the evidence which had been now adduced being more satisfactory, would not here be applicable: the decisions of a former committee had always been considered a great authority by this House, as appeared from the Southwark case,* and the present Committee would not feel inclined to depart from so well established a practice.

Mr. *Pollock* for the sitting member.—There is no evidence before the present Committee as to the grounds of the former decision by the Committee of 1831: there might have been many causes of disqualification then which do not exist now, and it is more than probable that those votes might have appeared to them open to the objection of occasionality, as they had then been but recently created, an objection for which there is now no pretence: the argument, therefore, with regard to the authority of former committees is not in point. But here there is a more important consideration still, which puts this case quite beyond all question. When Holdaway's case was before the barrister the minutes never were tendered in evidence. That officer then, sitting, as he did, as a judge of the qualification or disqualification of the voter, was of opinion that the deed under which Holdaway claimed gave him a sufficient estate, and there was no evidence before him to show that the case was in

* Clifford, 221. 1 Peck. 376, note.

any way similar to Sir James Macdonald's. But neither has such evidence been produced even now: the rejection consequently of that vote in 1831 is a mere matter of history, which under circumstances which are very different can be by no means drawn into a precedent. Then as to the decision of the assessor, nothing but the death of Mr. Ogle prevented the continuation of the appeal against his judgment. Nothing then having been advanced to impugn the determination of the barrister, the vote stands upon the poll as a good vote, and the Committee will not be warranted in causing it to be expunged.

Holdaway's vote good.

The Committee resolved unanimously, that the vote of William Holdaway do stand upon the poll.

John Robson's case.

The counsel for the petitioner then proceeded to object to the vote of *John Robson*, who was also entered for a share in the Cricket-field, stating that they now proposed to go more fully into the merits, and the rights of the persons who claimed in respect of that title.

Further evidence upon the claim of the Cricket-field voters.

It was upon this agreed, that the evidence given in Holdaway's case should be taken as put in upon this vote also; and the following additional facts were then proved. It appeared that the Cricket-field before 1820 had belonged to Mr. Hector, who was then Mr. Jolliffe's agent, and that at the election in 1820, a Mr. Labbington voted for it, a title having been conveyed to him for the joint lives of himself and Mr. Hector for the purpose of making a vote. No consideration had passed at that time, and no reconveyance had ever been made by Labbington, it being considered that the conveyance to him would be void as against subsequent purchasers for a valuable consideration. After the year 1826 some differences took place between Mr. Jolliffe and his agent, and subsequently, prior to the election in 1830, a prospectus was issued for the forming of an association, to be called "The Petersfield Improvement Association,"

which was distributed chiefly (as it was contended) amongst persons opposed to the principles of Mr. Jolliffe. A meeting was afterwards held, directors appointed, and the Cricket-field was then purchased from Mr. Hector for 1000*l.* which was paid by a check from the directors on the Petersfield Bank, of which Mr. Hector was the principal proprietor. The funds of the association did not amount to 1000*l.* at that time, a fact which was proved by the production of the bank books, and it appeared that these funds had been chiefly derived from the managers of the association, who banked with the Petersfield Bank, and gave checks to the amount of the number of shares which they took; other shares were taken by persons, strangers to the place, and a long inquiry was gone into to show that those persons were in fact not *bonâ fide* holders. At the election in July 1830, deeds of assignment of shares in this association were kept at the committee room of Lord Porchester and Mr. Ogle, and were taken up by their friends as they were wanted at the moment; the amount of the consideration paid did not appear. Each individual, as he obtained the deed, went immediately and tendered his vote for Lord Porchester and Mr. Ogle: the returning officer, however, rejected them all. In October, 1830, there was a meeting of the directors in Petersfield, when it was resolved to let the field to a person of the name of Chase, on condition that he should at any time give it up on demand. About that time there was a crop of oats in the field, but since it had run to pasture, and Chase's cattle had been turned out on it. Prior to the last election a notice had been stuck up, stating that it was to be let on building leases, but no preparations had been made, and no stone ever laid towards erecting the public rooms, institutions, &c. mentioned in the prospectus. It appeared that the spot was but indifferently adapted to any such purpose; in extent it was about three acres, although in the deed it was described

as containing five; it was situated close on the boundary line of the borough, and divided from the high road by a strip of wastrel, belonging to the lord of the manor; the entrance was over that strip to a gate situated about fifteen feet from the road, and there was no other access but by a stile from the opposite side.

The rate books were put in, and it appeared that Mr. Hector had been rated and paid the poor, church, and highway rates for this field, from the year 1815, up to March 1832, and that in the rate dated 14th December, there was an entry of the Cricket-field in the name of another person for the first time; the tithe had been paid in the same manner until after Michaelmas 1832, when an alteration was made in consequence, as it was said, of a division of the land. The value of the property was proved not to exceed 400*l.*, and the votes tendered in respect of it in 1832 had, as was stated in Holdaway's case, all been rejected by the assessor; Robson was one of those shareholders.

Argument upon the vote.

Upon this evidence Mr. *Follett* was heard against the vote. No consideration appears to have actually passed in respect of the shares claimed in this Cricket-field, or if any money was paid, there can be little doubt but that it was supplied for the purpose, in such a manner as to rebut any presumption that it was a *bonâ fide* transaction: the payment of the purchase money for the field by drafts on the Petersfield Bank, was clearly nothing more than a transfer of entries from one side of the account to the other. Then the situation and value of the field, and the entire absence of any preparation for carrying into effect the pretended objects of the Improvement Association, showed that the whole was a scheme, simply for the purpose of manufacturing votes. These votes then were occasional in their original fabrication, and if so, they must according to the received law of elections be still held to be bad. The cases of *Melcombe*

Regis,* and *Onslow* v. *Rapley*,† are both in point; the *Callington* Committee‡ went even further: there the consideration money was actually paid, but the deeds having been only executed some days before the election, the votes were rejected as occasional. Upon these grounds, therefore, Robson's vote must be struck off.

Mr. *Pollock*, contrà, contended, that although there doubtless had been an intention to enlarge the constituency of the borough, still there was also evidence of a real design of building for the improvement of the town of Petersfield. Nothing was more common than to purchase land in counties for the purpose of acquiring the vote and interest attached to such property, and unless some circumstances of fraud appeared on the face of the transaction, a similar purchase in this instance could not invalidate the vote. Now with regard to Robson, there was no evidence that he purchased his share merely for the purpose of acquiring the franchise, and in the absence of any such proof the transaction must be taken to have been perfectly *bonâ fide:* the cases cited are perfectly distinguishable from the present in that very respect, and then, on the authority of the Okehampton case,§ the Committee will not feel themselves warranted in presuming occasionality.

The Committee decided that the vote of John Robson be struck off the poll.

Robson's name struck off the poll.

The case of *William Curtis* was next gone into, and being distinguishable from the foregoing, his name was allowed to stand; but upon the case of *William Bowstead*, also a Cricket-field voter, being subsequently decided against the sitting member, the four others were given up.

The other Cricket-field votes given up.

* Rogers on Elections, 94.

† 9 Journals, 650; and Heywood on Borough Elections, p. 337.

‡ 75 Journals, p. 301; 76 Journals, p. 266.

§ 1 Peck. 360.

The petitioner now having the majority, the counsel for the sitting member proceeded to object to the vote of *James Cookson*.

James Cookson's case.

Place of abode of objector having been omitted from the notice of objection, notice held bad by revising barrister.

This was a case in which a notice of objection had been duly served at the proper time before registration, but that notice when served contained no specification of the place of abode of the objector.* This omission had been discovered, and an insertion had been subsequently made in due form; but that was after the last day for making objections. The objector was well known to the overseer, and the latter had published the name of the voter in the list of voters objected to. The barrister nevertheless held, that the notice was insufficient, and refused to go into the merits.†

Merewether, Serjt., objected that the Committee had no jurisdiction to go into this case, there having been, in consequence of the informality of the notice, no decision by the revising barrister. At the suggestion, however, of the Committee he first proceeded to argue the question of the validity of the notice.

Argument on the validity of the notice.

In the form given in the schedule to the act the place of abode is included, and that it should be so stated in every notice is clearly necessary, as this is the only means which the party objected to can have of discovering whether the party objecting is entitled so to do. In boroughs the act confers that right on such persons alone who are actually entered on some list of voters for the same place. It is obvious, therefore, that if the individual objected to can discover that the objector is not so entitled, he may treat the notice altogether as a nullity, and thus be saved a vast deal of trouble and expense. It is true that in this instance the objector happened to be known to the overseer, but the point must be decided, not upon that which was a fortuitous occurrence, but upon the general principle, and according to that this notice is unquestionably bad.

* See Reform Act, 2 W. 4, c. 45, Sched. I. Form No. 5.

† [redacted] the argument on this point in the Bedford, *post*, pp. 42, 45.

Mr. *Pollock*, contrà. The Reform Act does not in this case require a precise form of notice, on the contrary, it is expressly provided in the 47th section, "that the party objecting shall give or cause to be given a notice in writing, according to the Form 5, Schedule I, or to the like effect." Here then that provision has been complied with, since the effect of the notice was the same as if it had been drawn in the very terms of the form. The overseer receives it, acts upon it, and the name is published by him amongst those persons objected to. There is, besides, another section of the act, the 79th, which appears to have been inserted for the very purpose of preventing any bad consequences which might arise from an informality like the present; it is there enacted, "that no misnomer or inaccurate description of any person or place named or described in any schedule to this act annexed, or in any list or register of voters, or in any notice required by this act, shall in anywise prevent or abridge the operation of this act with respect to such person or place, provided that such person or place should be so designated in such schedule, list, register or notice, as to be commonly understood." The notice in this case, then, was understood by the overseer, and it is not necessary that the place of abode of the objector should be communicated to any one else. There is nothing in the act to compel the overseer to keep the notices of objection, still less to show them to the party objected to; and there can be no doubt but that there would have been such a provision, had it been the intention of the legislature that an inquiry into their validity should take place before the revising barrister: all, therefore, that it was incumbent upon that officer to do, was to look at the list of objections, and as the name of James Cookson duly appeared there, the barrister was wrong in refusing to go into the merits.

Merewether, Serjeant, in reply, contended, that the

79th section was introduced merely for the purpose of remedying the effect of misnomers and misdescriptions, but that in the present instance the informality complained of was an omission, and that of very important matter: in the case of such an omission as this it would be impossible to say that the notice was to the "like effect." Then again, the arguments adduced on the other side, if followed fully out, would go to make the overseer the judge of a valid and invalid notice, and surely nothing could be more dangerous than this. The act, it is true, does not in words compel him to preserve the notices, but from its general tenor there was no doubt that they ought to be preserved and produced, and that the only competent judge of their validity at the registration was the barrister.

Committee resolve to go into the merits of the case notwithstanding the nature of the notice.

The Committee resolved that the counsel for the sitting member should proceed with his case.

Cookson was entered as voting for a freehold house. It was then proved that the tenant in actual occupation of that house had for more than twenty years paid rent to another landlord; and it was also proved that at the election in 1830, Cookson, when going up to vote, had said, almost in the presence of the assessor, that he knew his vote would not pass: the assessor, however, admitted him, and he had voted at other elections. The objection now was, that he had no *bonâ fide* interest in the premises; that, in fact, it was not a beneficial freehold.

What an insufficient interest for a freehold vote.

Heath, Serjt., upon this evidence, contended that there was here a sufficient *primâ facie* case to make this vote appear at least as little valid as those tendered for the Cricket-field, and that the facts were confirmed by the voter's own declaration, which, according to *Weaver's* case,* whether made before or after the election, is admissible for the purpose of destroying the vote, unless it goes to affect the party with a penalty, as for bribery.

* Leominster case, 2 Peck. 295.

Merewether, Serjt., answered, that the voter might have put himself out of occupation, and deprived himself of all immediate beneficial interest in the house, and yet be the holder of the freehold; and that his having been admitted to vote at former elections made this case distinguishable from that of the Cricket-field voters.

The Committee resolved that Cookson's vote should be struck off the poll.

Three other cases having been next disposed of in which no point occurred, the counsel for the sitting member then proposed to go into the case of *Thomas Crockford*.

Thomas Crockford's case.

This was a case in which no objection had been made to the name as it stood in the overseer's list, and on which consequently there had been no discussion before the revising barrister. The ground of the objection which it was now proposed to raise was one which existed equally before the 31st of July, and which consequently might, by giving due notice, have been taken at the period of registration.

Merewether, Serjt., now again raised the question of the jurisdiction of the Committee to go into the case under such circumstances, when, after argument, the Committee resolved, "that they were not empowered to take cognizance of such votes as had not been decided on by the barrister."*

Committee will not take cognizance of such votes as have not been decided on by the barrister.

Mr. *Pollock*, for the sitting member, in consequence of this decision declined carrying the case further.

* This question having been raised upon the English Reform Act in three successive committees—the Petersfield, Oxford and Bedford—and as in every instance the point was the same and the decision similar, it has been deemed desirable to give the speeches of counsel once only: the Bedford, therefore, having been the latest decision, and all the authorities having been there most fully cited, the argument will be found given at great length in the report of that case, which follows. See *post*, p. 48.

The Committee then resolved,

That J. G. S. Lefevre, Esq. was not duly elected.

That H. Jolliffe, Esq. was duly elected, and ought to have been returned.

That neither the petition, nor the opposition to it, appeared frivolous or vexatious.

That the said Committee have also to inform the House, that they have altered the poll taken at such election, by striking off John Robson, William Binstead, William Wild, William Southen, William Garthorn, George Golding, James Cookson, Charles Edward Twyford, William Ayling and Thomas Judd, as having no right to vote.

CASE III.

BOROUGH OF BEDFORD.

THE Committee was chosen on Tuesday, March 5th, 1833, and consisted of the following members.

Edward Ayshford Sandford, Esq., (*West Somerset,*) Chairman.

D. Gaskell, Esq. *Wakefield.*	Lord William Lennox. *King's Lynn.*
W. E. Gladstone, Esq. *Newark.*	E. Lister, Esq. *Bradford.*
T. Duffield, Esq. *Abingdon.*	Edward Strutt, Esq. *Derby.*
James Halse, Esq. *St. Ives.*	George Wood, Esq. *Lancashire, South.*
Lord Viscount Lumley. *Nottinghamshire, North.*	Sir W. W. Wynne, Bart. *Denbighshire.*

Petitioners—Electors.

Sitting Member petitioned against—Samuel Crawley, Esq.

Counsel for the Petitioners—Mr. Harrison, Mr. Serjeant Heath, and Mr. Ryland.

Agents—Messrs. Lowdham, Parke, and Freeth.

Counsel for the Sitting Member—Mr. Serjeant Merewether, Mr. Follett, and Mr. Wm. Russell.

Agents—Messrs. Vizard and Leman.

Petition states the candidates.

The petition, which proceeded from the friends of Captain Polhill, stated, that the election for the borough of Bedford was held on the 12th and 13th days of December, 1832, and that William Henry Whitbread, Esq. Samuel Crawley, Esq. and Frederick Polhill, Esq. were candidates, and that Mr. Whitbread and Mr. Crawley were returned.

The return.

That many persons who were not freemen, or entitled to vote as freemen, or who, being freemen, were not qualified in respect of residence within the said borough, or the limit prescribed by the Reform Act, and many others who were not qualified under that act as electors in respect of property, occupation, or residence,

That many persons not qualified had been inserted in the lists, and had been retained by the revising barrister, because no notice or informal notices of objection had been given, or the objection withdrawn.

did nevertheless procure their names to be inserted in the lists to be delivered to the revising barristers, and that many other persons who were not qualified or entitled to be inserted in such lists, were improperly inserted therein by the town clerk of the said borough as persons entitled to vote as freemen, although the said town clerk well knew, or ought to have known, that they were not resident within the said borough, or within the limit prescribed by the said act, or were otherwise not entitled to be inserted in the register, or to vote; and that many other persons who were not qualified in respect of property, occupation, or residence, or otherwise under the provisions of the said act were improperly inserted in the lists by the overseers, and that many of such persons were nevertheless by the said barristers retained in the register, in many cases on the ground of no objections being made to the insertion of such unqualified persons before such barristers in such lists and registers, and in many other cases on account of objections not being made in writing, or of alleged or supposed irregularities in the form or mode or manner of making objections, or of the giving notice of such objections to such unqualified persons, and in many other cases on account of persons who had made such objections, and by so doing prevented others from objecting to such unqualified persons withdrawing or not supporting their objections.

That many persons who had incurred some legal incapacity, had been retained on the register for the same reason.

That many persons who were on the roll of freemen of the said borough, and many persons who claimed to be entitled in respect of property, occupation, and residence, to be voters and electors under the provisions of the said act, but who were respectively subject to legal incapacities, or disqualified by the receipt of alms or parochial relief, and who were not entitled, according to the provisions of the said act, to be registered, or to vote, did nevertheless procure their names to be inserted in the lists of voters for the said borough as freemen or other electors, or were improperly inserted in the said lists, and were retained in the said lists, and registered by

the revising barristers, upon the alleged or supposed ground that objections were not made to the retaining such persons on the register, or that objections, if made, were not made in writing, or were not made in the proper form and manner, although it was notorious that such persons were disqualified, and that the persons objected to were present, and also the persons who could prove such disqualifications, and were ready to give such evidence, or who could have been immediately produced, and such disqualifications were notorious to such barristers, but such disqualified persons were nevertheless left on the register, and no scrutiny of votes being by the said act allowed by or before the returning officers, many of such persons so not entitled or qualified as freemen, or in respect of property, occupation, or residence as aforesaid, and many persons who were so legally disqualified as aforesaid, did vote at the said election in favour of Mr. Crawley.

That many persons who were registered as electors as freemen, or in respect of property, occupation, and residence, by the revising barristers, became disqualified as electors for the said borough at the said last election, between the period of the register being so revised and signed by the said barristers, and the time of the holding of the said last election, by having ceased to reside as freemen within the said borough, or the limit prescribed by the said act, or by having parted with, sold, or otherwise ceased to be possessed of or to occupy the property in respect of which they were registered as electors for the said borough, or to reside within the said borough, or the limit prescribed by the said act, and thereby ceased to possess the title or qualification, whether as freemen or other electors, in respect of which they had been registered; and that others were disqualified by receiving bribes, or promises of money or bribes, or other rewards for giving their votes at the said last election, or by receiving of alms or parochial relief, or otherwise, after the revising and signing of such registers, but all such

That many persons who had become disqualified between the time of revising and signing the register, and the time of election, had been allowed to vote.

persons were nevertheless allowed to vote, inasmuch as the returning officers declared that they had no power of scrutinizing or inquiring into such votes; that other persons also who were not registered, and who were neither freemen of, or if freemen did not reside within the said borough, or the limit prescribed by the said act, nor electors otherwise qualified or entitled to vote as electors of the said borough, under the provisions of the said act, and who respectively were not entitled to vote at the said last election, did nevertheless vote at the said last election for the said borough; and some persons who were not inserted in any list, and who had not applied to be inserted in the lists, and who were not present to claim to be put upon the register, and who were not entitled to be put upon the register, or to vote at the said last election for the said borough, were nevertheless retained upon the said register, and were allowed to vote at the said election for Mr. Crawley. It also contained charges of bribery and treating, and stated that by reason of the premises Mr. Crawley had obtained an apparent and colourable majority of votes over Captain Polhill, whereas the majority of legal electors and voters was in favour of Captain Polhill; and that the freedom of election had been thereby violated, inasmuch as the constituency intended to be established by the act had not returned the member; but that the said election and return had been made by persons not qualified to be electors according to the provisions of the act, or who were disqualified by the provisions of the said act and other acts of parliament, the custom of the said borough, and the law of parliament, from voting; and it concluded by praying the House to take the premises into consideration, and to declare the election and return of Mr. Crawley wholly null and void, and that Captain Polhill was duly elected, and ought to have been returned.

That bribery and treating had been practised,

and that the return had been made by the votes of unqualified persons.

Prayer.

Case for the petitioners.

Mr. *Harrison*, for the petitioners, stated, that it was proposed to abandon the charges of bribery and treating,

and that the case would thus resolve itself into a scrutiny, and that the votes would be brought forward in classes. It would then appear that the names of freemen had been copied from the corporation books into the lists, some of whom were dead, and many of whom were disqualified by non-residence;—that amongst the inhabitant householders also, an old reserved right of voting in the borough of Bedford, many had been improperly inserted, some had received parochial relief, some held under the Bedford charity. Many other cases also would be brought before the Committee, in all of which notices of objection had been duly served; but as the objector had omitted to specify in them his place of abode, that point had been taken before the revising barrister, and he held those notices to be invalid. It would be for the Committee to determine how far that decision was warranted by the language of the Reform Act, and if, as he contended, it were not so warranted, he should have little difficulty in showing, that the election ought to have terminated in favour of Captain Polhill.

Proof of authenticity of the poll books.

The town-clerk of Bedford was then called, and produced the poll-books. He deposed that the numbers had been cast by the mayor, that the books were then handed to him by the mayor, after the numbers had been declared on the second day of polling, and that they had remained in his office, to which, nevertheless, his clerks and others had access, from that time to this, with the exception of two hours. During those two hours they were in the custody of his clerk in another office, for the purpose of being examined by an agent of one of the sitting members. On being returned, they had been placed by him in an envelope and sealed. Prior to that, they had been tied up and taken care of in the same manner as other important documents; and he had every reason to believe, from their appearance, that they had remained in his office untouched.

Mr. Russell, for the sitting member, upon this evi-

dence, shortly objected to the admissibility of these books; and Mr. *Ryland* was heard, in answer, on the part of the petitioner. The Committee, however, intimated that the poll had been sufficiently proved.

The books were then put in, and the gross numbers appeared to be for

The Poll.

Mr. Whitbread, . . .	599
Mr. Crawley, ...	486
Capt. Polhill, ...	483

The counsel for the petitioners now proposed to object first to the vote of

Flight's case.

Thomas Flight.

The town-clerk produced the original list of freemen, and stated that he had made it out from the admissions of the freemen of the borough, as recorded in the books of the corporation, adding their descriptions and residences in Bedford, London, or elsewhere, just as he found them entered in those books.

That list had been duly published, according to the provisions of the Act; and, upon receiving certain notices of objections to certain names therein contained, he had made out a list of votes objected to, which had been also duly published. Some of the notices were signed by Mr. Eagles. He delivered in those notices to the revising barrister: a part of them was returned to him, and some of these last he was now required to produce.

Argument as to the power of committees to question the decisions of revising barristers upon the informality of notices of objection.

Mr. *Russell* objected to their production. These notices can only be called for in a case into which the Committee has a right to inquire, and it is submitted that here no case has been made out which can give the Committee jurisdiction. By the 60th section of the Reform Act, the correctness of the register may be impeached before a Committee, " by proving that, in consequence of the decision of the revising barrister, the name of any person who has voted at such election was improperly inserted or retained in such register, or the name of any person who tendered his vote at such election improperly

omitted from such register." Now, the present is not a case of tender, but here is a vote appearing and remaining on the register: but the question is, whether or not it has been retained there by a decision of the revising barrister. The 50th section of the Reform Act provides that the barrister shall retain on the list of voters the names of all persons to whom no objection shall have been made *in the manner hereinbefore mentioned*. Now that manner is specified in section 47, and if the notice had not been given in that manner, then the notice was a nullity; the revising barrister, consequently, having no objection before him, had no power to make a decision, still less a decision on merits, which is obviously what the Act contemplates; and if he had made no decision, then, according to the 60th section, there was no case for the exercise of the jurisdiction of a Committee.

Mr. *Ryland*, for the petitioner, contended, that the objection to these notices was premature. No evidence has yet been gone into to show what the decision of the barrister was, or upon what grounds. The 50th section provides, that the barrister shall retain on the list of voters, the names of all persons to whom no objection shall have been made. Surely, then, the Committee has a right to see whether there was an objection or not.

Mr. *Russell* replied, that by the lists of objections given in by the petitioners under the 9 Geo. 4, c. 9, s. 14, they were precluded from saying that any objection had, in this case, been made before the revising barrister; and in the opening of counsel this objection had, in point of fact, been treated as a nullity. Of such an objection, therefore, the Committee will not take cognizance.

The Committee decided that they had the power to question the decision of the revising barrister, as to the formality of the notice of objection.

Committee has such power.

The town clerk was now recalled, and stated that Mr. Eagles, the objector, was a solicitor well known at Bedford; that he had known him from childhood; that Mr. Eagles had served these notices on him personally, and that he had himself produced the lists and objections before the revising barrister.

The entry of this vote on the list of the votes objected to was "Thomas Flight, jun., 318, Holborn, London." The notice of objection was signed "E. Eagles," without any addition of the objector's place of residence.

Evidence respecting those informal notices.

Mr. Ezra Eagles was then called, and proved that he was present when the freeman's list had been brought on before the revising barrister; that there was a general objection at the bottom of the list which the revising barrister held to be bad; that the notices of objection were then produced; that on the first case called on, an objection was taken to the validity of the notice, on the ground of the omission of the place of abode of the objector, (Mr. Eagles); that evidence was admitted to show his identity, to show that he was himself on one of the lists of voters for the borough; that he was perfectly well known in Bedford and to the town clerk, to the overseers, and to the party objected to; that the notice had been acted on and the lists duly published; and that after the case had been then argued, in the course of which argument the opinion of the Solicitor-General against the validity of such notices had been read, Mr. Austin the barrister had decided that the notice was invalid. He stated further, that all the other objections signed in that manner were then tendered to the barrister as a matter of form; that Thomas Flight's case was never in point of fact discussed, as the barrister held that the notice, being informal, gave him no jurisdiction; but that the notice of objection to Flight was delivered in with the others. Evidence was then tendered to prove that Flight resided more than seven miles from Bedford, but the Committee, upon objection, suggested that the objec-

tions as to the validity of the notice should be first argued.

Mr. *Follett* for the sitting member:

Argument upon the validity of these notices.

The question here is, whether the Committee will confirm the decision of the barrister, that he was precluded by the informality of this notice from going into the merits of the case. The 47th section of the Reform Act prescribes the manner in which these objections are to be taken, and the form given for Boroughs in Schedule I. No. 5, specifies that the notice is to be signed thus:—"A. B. of (*place of abode*)." Now in the present case the notice does not specify the place of abode, and it is therefore submitted that it is not within the Act.

The decisions upon the Annuity Act, 53 Geo. 3. c. 141, are quite in point. The second section of that Act requires a memorial of the date of the deed of the names of all the parties, and of all the witnesses, &c. to be enrolled in the form or to the effect following, and then follows a table showing what the form of the memorial is to be, and under the head of names of witnesses there is "E. F. of————" That table evidently imports that the place of residence of the witness should be inserted, and accordingly it was held in *Darwin* v. *Lincoln*,* that a memorial which did not contain the place of residence of the subscribing witnesses was void. In *Smith* v. *Pritchard*,† there was a similar decision. *Check* v. *Jeffries*,‡ goes even further, for it was there held that the initial of the Christian name of the subscribing witness was not sufficient, but that the Christian name itself must be given

* 5 B. & Ald. 444.

† Ibid. 747. It appeared from the affidavits in this case, that it was thus stated in the memorial—"Charles Rilot, clerk to William Agar, of Great Marlborough-street, in the county of Middlesex, gentleman." Charles Rilot did not reside in Great Marlborough-street, but was clerk to Mr. Agar, who resided there; and it was sworn that he had been well known to the defendant *thirteen years*.

The Court nevertheless held that this was not sufficient, it appearing that Rilot did not reside, but only attended at the office there at the time.

‡ 2 Barn. & Cres. 1.

summary applications to courts of justice, which could not be reviewed in any superior court, deemed null and void:" and the first section then goes on to declare, "that by the said 53 Geo. 3, no further or other description of the witnesses is required in the memorial of annuities, besides their names." But the Reform Act contains a section, the 79th, which was especially provided for the purpose of obviating any inconvenience which might arise from inaccuracies of this nature. Now there are some inaccuracies much more calculated to mislead than a mere omission of this sort, and yet that section declares, that no inaccurate description shall vitiate the proceedings, provided the person or place shall be so designated in the schedule, notice &c., as to be commonly understood. In this case, then, it was commonly understood that Mr. Eagles was the objector; the town-clerk, and the party objected to himself, understood him to be so; the notices might have been destroyed immediately, and then the names standing in the objected list would have afforded a sufficient primâ facie case for an investigation before the barrister.

Mr. *Follett* in reply:

The two acts in question proceed precisely in a similar manner. The Annuity Act provides that annuities may be granted under certain specific forms; the Reform Act provides that objections may be taken under certain specific forms likewise. It is said that annuities are not favoured by the law, but it is still more clear that objections to the franchise should be looked at with still greater jealousy. The very enactment of the 3 Geo. 4, is a proof that the decisions in *Darwin* v. *Lincoln* and *Smith* v. *Pritchard*, were strictly in accordance with the former statute 53 Geo. 3, c. 141, for, could any other interpretation have been put by the Courts on that act, it would not have been requisite to have come to Parliament for authority to alter the law. If the Reform Act be found to be in practice inconvenient, new provisions may be suggested for its amendment: but as it is, no

claim even is valid in form where the residence of the claimant is omitted. If that be so then in a case where the qualification is necessarily set out * in such a manner as to afford means of identifying the party, how much more essential is the specification of residence in the present notice, where the abode subscribed is the only clue to ascertain the individuality of the objector. The 79th section relates only to misnomers and inaccuracies. Now here there is a positive omission, and that of a fact, which, if it is to be supplied or not according to the accidental knowledge of every town-clerk or overseer, would leave the entire decision of the validity of these notices to the discretion of officers, whose discretionary power under this act is already, perhaps, far too considerable.

The Committee determined that the notice of objection was informal, and that the barrister's decision was right.

Argument upon the jurisdiction of the committee in cases where no issue has been raised before the revising barrister.

It was now proposed that the question should be argued as to the power of the Committee to inquire generally into the validity of votes on which no issue was raised before the revising barrister.

Argument in support of the jurisdiction.

Mr. *Harrison* was accordingly heard;—opening this question, as a distinct part of the case for the petitioners.

The Reform Act does not interfere with the jurisdiction heretofore possessed by Committees, of going into the cases of all the voters whose names appear on the poll. Were it otherwise the consequences would be most mischievous; but the object of registration is solely to prevent discussions at the time of polling, and thus to shorten the duration of elections, and to that object it must be confined. First, then, what are the powers which Committees have hitherto exercised? Secondly, are those

* See Sched. I, No. 4, where the locality of the qualification is especially set out.

powers restricted by the Reform Act? Thirdly, what would be the effect of such a restriction?

1. The jurisdiction of the House in matters respecting elections, is of great antiquity,* and sanctioned by great authorities. The more ancient cases on this subject are collected in the preface to Glanville's Reports,† and exhibit, during the earlier periods of our history, various and conflicting decisions; but in the latter end of the 16th and the beginning of the 17th centuries, as that author himself, a great authority, states,‡ "the question of the right to inquire into and decide matters relating to the election of members of the House of Commons, was warmly agitated and contested between the Crown and that House. On the part of the Crown it was contended, that as the writ for the election issued out of, and was returnable into, the Court of Chancery, the Lord Chancellor was the sole and proper judge of the due execution of the writ, and consequently of the legal qualifications of the elected. On the other hand, it was insisted upon by the House of Commons, that the sole and exclusive right of determining upon cases concerning the election of their own members was lodged in that House." Ancient jurisdiction of the House.

The contest here noticed arose in the year 1586, the 28th

* See the cases collected in the preface to Glanville's Reports, page 11.

† Mr. Glanville was himself Chairman of the Committee of Privileges and Elections, appointed in the reign of James I. In the preface to his Reports it is stated, that the number of controverted elections having greatly increased in the two last Parliaments of King James, many of the ablest members of those Parliaments agreed in opinion, that some certain rules or great outlines of the legal rights of voting were become necessary to be laid down, as a guide and direction to the electors and candidates in the country, and as a remembrance of the reasons and grounds upon which the determinations of the House were founded.

The Committee before whom these cases were agitated was a Select Committee, composed of a certain number of Members eminent for their great abilities, and particularly distinguished for their knowledge in the laws and constitution of their country. Their names are to be found at length in the preface, p. viii. Of this Committee Glanville was the Chairman, and his reports are the result of its labours and inquiries.

‡ See Glanville's Preface, p. ix. x.

persons were nevertheless allowed to vote, inasmuch as the returning officers declared that they had no power of scrutinizing or inquiring into such votes; that other persons also who were not registered, and who were neither freemen of, or if freemen did not reside within the said borough, or the limit prescribed by the said act, nor electors otherwise qualified or entitled to vote as electors of the said borough, under the provisions of the said act, and who respectively were not entitled to vote at the said last election, did nevertheless vote at the said last election for the said borough; and some persons who were not inserted in any list, and who had not applied to be inserted in the lists, and who were not present to claim to be put upon the register, and who were not entitled to be put upon the register, or to vote at the said last election for the said borough, were nevertheless retained upon the said register, and were allowed to vote at the said election for Mr. Crawley. It also contained charges of bribery and treating, and stated that by reason of the premises Mr. Crawley had obtained an apparent and colourable majority of votes over Captain Polhill, whereas the majority of legal electors and voters was in favour of Captain Polhill; and that the freedom of election had been thereby violated, inasmuch as the constituency intended to be established by the act had not returned the member; but that the said election and return had been made by persons not qualified to be electors according to the provisions of the act, or who were disqualified by the provisions of the said act and other acts of parliament, the custom of the said borough, and the law of parliament, from voting; and it concluded by praying the House to take the premises into consideration, and to declare the election and return of Mr. Crawley wholly null and void, and that Captain Polhill was duly elected, and ought to have been returned.

That bribery and treating had been practised,

and that the return had been made by the votes of unqualified persons.

Prayer.

Case for the petitioners.

Mr. *Harrison*, for the petitioners, stated, that it was proposed to abandon the charges of bribery and treating,

and that the case would thus resolve itself into a scrutiny, and that the votes would be brought forward in classes. It would then appear that the names of freemen had been copied from the corporation books into the lists, some of whom were dead, and many of whom were disqualified by non-residence;—that amongst the inhabitant householders also, an old reserved right of voting in the borough of Bedford, many had been improperly inserted, some had received parochial relief, some held under the Bedford charity. Many other cases also would be brought before the Committee, in all of which notices of objection had been duly served; but as the objector had omitted to specify in them his place of abode, that point had been taken before the revising barrister, and he held those notices to be invalid. It would be for the Committee to determine how far that decision was warranted by the language of the Reform Act, and if, as he contended, it were not so warranted, he should have little difficulty in showing, that the election ought to have terminated in favour of Captain Polhill.

Proof of authenticity of the poll books.

The town-clerk of Bedford was then called, and produced the poll-books. He deposed that the numbers had been cast by the mayor, that the books were then handed to him by the mayor, after the numbers had been declared on the second day of polling, and that they had remained in his office, to which, nevertheless, his clerks and others had access, from that time to this, with the exception of two hours. During those two hours they were in the custody of his clerk in another office, for the purpose of being examined by an agent of one of the sitting members. On being returned, they had been placed by him in an envelope and sealed. Prior to that, they had been tied up and taken care of in the same manner as other important documents; and he had every reason to believe, from their appearance, that they had remained in his office untouched.

Mr. Russell, for the sitting member, upon this evi-

dence, shortly objected to the admissibility of these books; and Mr. *Ryland* was heard, in answer, on the part of the petitioner. The Committee, however, intimated that the poll had been sufficiently proved.

The books were then put in, and the gross numbers appeared to be for

The Poll.

Mr. Whitbread, . . .	599
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The counsel for the petitioners now proposed to object first to the vote of

Flight's case.

Thomas Flight.

The town-clerk produced the original list of freemen, and stated that he had made it out from the admissions of the freemen of the borough, as recorded in the books of the corporation, adding their descriptions and residences in Bedford, London, or elsewhere, just as he found them entered in those books.

That list had been duly published, according to the provisions of the Act; and, upon receiving certain notices of objections to certain names therein contained, he had made out a list of votes objected to, which had been also duly published. Some of the notices were signed by Mr. Eagles. He delivered in those notices to the revising barrister: a part of them was returned to him, and some of these last he was now required to produce.

Argument as to the power of committees to question the decisions of revising barristers upon the informality of notices of objection.

Mr. *Russell* objected to their production. These notices can only be called for in a case into which the Committee has a right to inquire, and it is submitted that here no case has been made out which can give the Committee jurisdiction. By the 60th section of the Reform Act, the correctness of the register may be impeached before a Committee, " by proving that, in consequence of the decision of the revising barrister, the name of any person who has voted at such election was improperly inserted or retained in such register, or the name of any person who tendered his vote at such election improperly

omitted from such register." Now, the present is not a case of tender, but here is a vote appearing and remaining on the register: but the question is, whether or not it has been retained there by a decision of the revising barrister. The 50th section of the Reform Act provides that the barrister shall retain on the list of voters the names of all persons to whom no objection shall have been made *in the manner hereinbefore mentioned*. Now that manner is specified in section 47, and if the notice had not been given in that manner, then the notice was a nullity; the revising barrister, consequently, having no objection before him, had no power to make a decision, still less a decision on merits, which is obviously what the Act contemplates; and if he had made no decision, then, according to the 60th section, there was no case for the exercise of the jurisdiction of a Committee.

Mr. *Ryland*, for the petitioner, contended, that the objection to these notices was premature. No evidence has yet been gone into to show what the decision of the barrister was, or upon what grounds. The 50th section provides, that the barrister shall retain on the list of voters, the names of all persons to whom no objection shall have been made. Surely, then, the Committee has a right to see whether there was an objection or not.

Mr. *Russell* replied, that by the lists of objections given in by the petitioners under the 9 Geo. 4, c. 9, s. 14, they were precluded from saying that any objection had, in this case, been made before the revising barrister; and in the opening of counsel this objection had, in point of fact, been treated as a nullity. Of such an objection, therefore, the Committee will not take cognizance.

The Committee decided that they had the power to question the decision of the revising barrister, as to the formality of the notice of objection.

Committee has such power.

cases must be taken to affect the same offence indictable at the assizes: here the jurisdiction of the sessions is not taken away, but will have a concurrent jurisdiction, and the offender may be prosecuted at either: unless the new statute shall use express negative words, as, that the offence shall be indictable at the assizes and not elsewhere.

The modern cases are to the same effect. In *Rex* v. *Hawkins*,* the 22d Car. 2. c. 1. commonly known by the name of the "Conventicle Act," was brought under consideration. In the ninth section it is provided, "that no other court whatever shall intermeddle with any cause or causes of appeal upon this act: but that they shall be *finally determined* in the quarter sessions only." And yet it was there decided that a certiorari nevertheless lay to remove orders under that act, although it was after appeal, verdict, and judgment: the court holding that the jurisdiction of the King's Bench is not taken away unless there be express words to "take it away." In like manner it has been decided that the 1 Will. 4. c. 21. enabling courts of law to issue commissions for the examination of witnesses abroad, will not prevent the Lord Chancellor from issuing such commissions just as he did before the passing of the act.† And lastly, in *Sheriff* v. *Coutes*,‡ which was an application to the Chancellor, upon an injunction to restrain the piracy of certain patterns employed in the printing of cotton goods, it was held that the language of the calico printers' acts§ which gave an action on the case for such piracy, did not, by providing that special remedy, oust that court of its equitable jurisdiction.

When such then have been the determinations with respect to the Court of Chancery, the King's Bench, and the Quarter Sessions, is it to be said that any thing short of the most express language will be sufficient to take

* 2 Burr. 1041.

† See argument of counsel in *Ex parte Lowe*, 1 Deacon and Chitty, 84.

‡ 1 Russell and Mylne, 159.

§ 27 Geo. 3, c. 38, s. 1; 29 Geo. 3, c. 19; 34 Geo. 3, c. 23.

away the high privileges and jurisdiction of Parliament? Now no part of the Reform Act contains any such words: on the contrary, the 75th section provides that "all laws, statutes, and usages, respecting the election of members of Parliament, in force at the time of the passing of that act, shall remain in full force, except so far as they are repealed by the act, or are inconsistent with the provisions thereof." But there is nothing in the continuance of the ancient powers of the House inconsistent with the new provisions for the registration and the powers given to the revising barrister. The effect of the 60th section is simply declaratory of the mode by which the parties interested may get the decisions of the barrister reviewed by the Committees; it does not, therefore, in the slightest degree interfere with their former jurisdiction of inquiring into every other matter concerning the election.

3. Then as to the effect which must be the consequence of a contrary determination.

Effects that must result from a contrary construction.

Fraud of the most extensive kind would most unquestionably be practised, and the inconvenience and expense which must ensue would be incalculable. This is an act which professes to amend the representation of the people; it is therefore a remedial statute, and in the construction of such statutes there are three points, says Blackstone,* chiefly to be considered;—the old law, the mischief, and the remedy; and it is the business of the judges so to construe the act as to suppress the mischief and advance the remedy. No greater mischief could attach to matters connected with the representation than fraud, whether originating with the electors themselves or the overseers and other functionaries employed in the registration. Votes may be manufactured to a great extent; personal incapacities of various kinds may be incurred, malpractices may occur in every stage of the proceeding, and the returns be in the hands of any persons, rather than the real constituency, unless the

* 1 Comm. 87.

House shall vindicate its privileges. In *Hearne's* case,* "because fraud and deceit abound in these days more than in former times, it was resolved by the whole court that statutes made against fraud should be liberally and beneficially expounded to suppress the fraud." So, here the House is called upon to interpose its authority, in order to secure a substantial and effectual amendment of the representation.

But it is said that there is a remedy elsewhere for such irregularities, and that the penalties given by the act may be strictly enforced against offenders.

It is true that under those provisions proceedings may be taken in the courts of law, and after considerable delay convictions may perhaps take place: but in the mean time the false return is made and acted upon, and even at last the punishment of a few individuals is no compensation for the injury done to the public interest.

Before other courts it not unfrequently occurs that parties who have sustained a wrong by the laches of a public officer can get no redress as to the principal mischief, but are left to their remedy against that functionary. But it was one of the chief advantages of the ancient jurisdiction of the House, that whilst the offender did not escape, there was also an immediate remedy for the more important and paramount injury done to the commonwealth.

Thus in the first *Chippenham*† case we find it resolved that the Commons in parliament are not to be concluded by the indentures, or return, of any county, city, borough, or port, if the same be not warranted by a due election, which ought to be the ground of every return in parliament. And albeit that in other inferior courts of the common law, the court, and the party in that suit, are concluded by the false return of the sheriff, in a cause between man and man; and the party grieved is thereby left to his action upon the case, for his remedy against the sheriff, to recover his damage for the wrong

* 3 Reports, 82. † Glanville's Reports.

thereby done unto him; yet in parliament, because the commonwealth hath an interest in the service of every particular member of the Commons' House of Parliament, and this court, and council of state and justice, is guided by peculiar, more high, and politic rules of law and state, than the ordinary courts of justice are in matters between party and party; and if, in a case of a false return to the parliament, the House of Commons should thereby be concluded, then should it be in the power of the sheriff to fill the parliament with persons never duly chosen, who by presumption will not be indifferent, and so may be a great means to overthrow, or much prejudice, the commonwealth; for which no fine, or punishment, to be imposed upon the sheriff, or other parties, for such undue returns, could ever make sufficient satisfaction; and the statutes which in the affirmative do inflict any particular forfeiture or penalty against the sheriff, or any other, for making a false return to the parliament, are but for a further punishment and terror, and do not abridge or take away the ancient and natural undoubted privilege and power of the said Commons in parliament, to examine the validity of elections and returns concerning their house and assembly, and to cause all undue returns in that behalf to be reformed, and to punish the offenders, concerning the same, according to justice.*

This doctrine of the more extensive jurisdiction of the House, and of its interference to protect the public, even in cases where the individual delinquent is from circumstances beyond the reach of the Courts of Law, is fully recognized also in the case of *Felton* v. *Easthope*. That was an action against Mr. Easthope for penalties for

* In the *Middlesex case* the extent of the power of inquiry was still more strongly asserted. It was there resolved, "that the House of Commons have their election to examine the matter *ex officio* as they see cause in their discretion; for they are a Council of State and Court of Equity touching things appertaining to their cognizance as well as a court of law, and they may themselves question any election, or return, although no party grieved do ever complain."—*Glanville's Rep.* 118.

bribery, in which the agent, who had bribed, stated that he had done so without the knowledge of the defendant. Lord Tenterden told the jury in his summing up, "that although there must, under these circumstances, be a verdict for the defendant, still that bribery by an agent, with or without the knowledge and direction of the principal, would void the election."* Then as to the time for inquiry an objection will be started, that the question ought to have been raised before, in the Barrister's Court; but there is in point of fact no limit to the period for investigating such a case as this before a Committee, save the regulations prescribed by the Standing Orders of the House. In cases where corporate rights were the foundation of the franchise, it was once doubted whether, when the parties had been so long in enjoyment of the privilege as to have given a sufficient time for trying the question in a Court of Law, the House could under such circumstances interfere. This point, however, was at the suggestion of Mr. Horner raised in the *Banbury* case, (Feb. 1808,) and it was resolved that as there might be many circumstances which might induce the parties not to bring the question before a Court of Law, that House could not part with its jurisdiction to the Court of King's Bench.† In 1819 and 1820, three other Committees came to a similar decision upon the precedent of the *Banbury* case; and in 1827, after another argument, the point was considered finally set at rest.

If such then be the powers invariably enjoyed by the House, and if the whole tenor of legal decisions goes to show that those powers ought not to be considered as repealed by the Reform Act, surely there never was a stronger case for their exercise than the present. We do not complain here of possible inconvenience, but of actual fraud to a considerable extent. The proportion of paupers on the poll is about one-fifth of the whole

* Rogers on Elections, p. 220.

† See also the *Bedford* case, 2 Douglas, 81.

number of voters; and persons non-resident, legally incapacitated, and even persons having no qualification at all, and who upon the very face of the lists appeared disqualified, have, from the informality of some proceedings below, been retained on the register. It is said that the expense of inquiries before a Committee is considerable; but if this power of investigation be abrogated, the hardship to candidates who in many instances have no other opportunity of inquiry but this will be great; and the expense of perpetually retaining agents all through the country to watch these proceedings from year to year, which every sitting member will be obliged to do, unless the House vindicates this its unquestionable jurisdiction, will be much more burthensome. The registration may be an admirable contrivance for lessening the duration and expense of the poll; but if it be carried further, so as to limit the power of parliamentary inquiry, the returns will be in the hands of any thing but the real constituency, and it will amount to an absolute denial of justice.

After this argument it was suggested by the Committee, that, as a matter of form, the case of some individual should be taken up on whose vote no issue had been raised before the revising barrister. The petitioners accordingly proposed to go into the case of *Joseph Cogan Tomlinson*, when Mr. Serjeant *Merewether* objected, and was heard at the same time in support of his objection, and in answer to Mr. *Harrison*'s argument.

Argument against the jurisdiction.

Merewether, Serjeant.—The objection is, that the Committee has no jurisdiction to inquire into a vote upon which there has been no adjudication by the revising barrister.

The proposition laid down on the other side is, that the Reform Act does not interfere with the antient jurisdiction of the House of Commons; and the authorities collected in Glanville have been cited in a long and learned argument to show the jealousy with which those privileges have always been vindicated by that House.

Ancient jurisdiction of the House not disputed, but the present jurisdiction depends on the true construction of the Reform Act.

It is not intended to dispute the fact, that such powers have heretofore been exercised; but the conclusion attempted to be drawn from thence, that the loose and varying practice which has from time to time prevailed, should be deemed to have the same authority, and should be dealt with in the same manner as statutes sanctioned by the formal authority of the legislature, is an inference by no means warranted.

The cases therefore which have been cited with regard to the language which is necessary in a later to repeal a prior act of parliament, are not altogether in point. But granting even that these privileges have all the force of statute law, upon the face of those cases the propositions advanced by the counsel for the petitioners go far beyond the most recent and authoritative decisions. On the contrary, it has been recently determined, and that upon a second hearing and after elaborate discussions before the Lord Chancellor and the Vice-Chancellor, that upon the creation of a new court a former jurisdiction may be taken away by implication and without express negative words.

The Lord Chancellor had heretofore an exclusive jurisdiction in matters of bankruptcy, but on the passing of the 1 & 2 W. 4, c. 56, establishing the new Bankruptcy Court, that jurisdiction was called in question, and the point was first raised by petition for a supersedeas before the Lord Chancellor in *Ex parte Lowe*.* Lord Brougham there said, "I have no doubt whatever upon the question. The authority of the new judges is exclusive, I have no controul or authority whatever over them, except what the act of parliament gives me, namely, to hear appeals from their decisions in the precise manner pointed out by the act. I have come to this conclusion, not without due deliberation, nor without competent advice. The new judges have the authority out and out, and I have good reason to believe it was intended by the legislature that they should have that authority."

Ex parte Lowe.

* 1 Deacon & Chitty, p. 3.

In *Ex parte Benson** the question was again raised, and the Lord Chancellor then said: "With respect to the jurisdiction of the Court, prospectively, in all matters arising in bankruptcy henceforth under the fiat, I consider the jurisdiction of this Court is so transferred to the Court of Review; and that the Court of Review could only be controlled and superintended by this Court, by an appeal in matters of law or equity in the way pointed out either by special cases, or in any other mode which in the peculiar circumstances of the case may seem proper." Ex parte Benson.

The judgment of the Vice-Chancellor, who sat as assessor to his Lordship, is more elaborate, and as it refers to cases expressly in point to the present discussion, is extremely valuable. It is as follows: "The Act of the 1 & 2 W. 4, c. 56, upon which these various points of jurisdiction have arisen, states in its preamble, (first of all reciting the act of the 6 Geo. 4, c. 16,) "that it is expedient to provide means of administering and distributing the estates and effects of bankrupts, and of determining the questions which from time to time arise touching the same, other than are provided by the said act," and then, "to the end that the rights, as well of the bankrupts themselves, as of their creditors, may be enforced with as little delay, expense, and uncertainty as possible, be it enacted, that it shall be lawful for his Majesty to create a court." Now it is observable, that the very intent which the legislature declared itself to have in view, is embodied and consolidated with that very sentence which creates the enactment, "that it shall be lawful for his Majesty to establish a Court of Review:" and then in the second section it is declared, "that the Judges shall also have superintendence and control in all matters of bankruptcy, and shall have power, jurisdiction, and authority to hear and determine, order and allow all such matters in bankruptcy, as now usually are or may be brought by petition, or otherwise, before the Lord Chan-

* 1 Deacon and Chitty, 338.

cellor, whether such matters may have arisen in the said Court of Bankruptcy, or elsewhere, except as is herein otherwise provided." And then it is provided in the third section, "that all such matters to be heard and determined in the said Court of Review, shall be brought on by way of petition, motion, or special case, according to the rules and regulations to be established as thereinafter provided; subject to an appeal to the Lord Chancellor on matters of law or equity, or on the refusal or admission of evidence only; and in all cases of appeal to the Lord Chancellor, by virtue of this act, such appeal shall be on a special case, and in no other mode whatsoever, except the Lord Chancellor shall in any case otherwise direct." And then it is provided, "that the determination of the judge on the settlement of such case shall be final, and that all appeals to the Lord Chancellor by virtue of this act shall be heard by the Lord Chancellor only, and not by any other Judge of the High Court of Chancery."

Now it does appear to me, that it is sufficiently to be collected from the enactment in the first section, coupled with what I find in the second and third, that *primâ facie* the jurisdiction of the Lord Chancellor in matters of bankruptcy is taken away; and I should say, taken away, except so far as was then evident on the face of the act itself, that it must of necessity be preserved. It was said, that where there has been an existing jurisdiction, which therefore might be called a concurrent jurisdiction, with a view to one that is newly created,—that cannot be taken away, except the express words; and in support of that observation, a case was cited from Saville's Reports, which, at the first of it, I think appears to be a very singular case. It is the case of Agard and Goodlad, Saville, 134. But whatever may be the authority of that case, it seems that a more liberal view of the law has been taken in a more modern case, namely, that of Cates v. Knight, and Cates v. Hardin.* In that case there

* 3 T. R. 445.

were actions brought to recover damages under the 25 Geo. 3, c. 51; and some of the counts of the declaration were for the penalty of £50, which could only be sued for in the superior courts; and the other counts were for the £10 penalty, which apparently could only be sued for in the inferior courts. After the trial a verdict was taken on the counts for the lesser penalties only; and Mr. Serjeant Bond moved to arrest the judgment, on the ground that no penalty under £50, created by the statute, could be sued for in the superior courts. The 57th section enacted, that all penalties of £50 should be sued for in any of his Majesty's Courts of Westminster; and the 59th section provided, that any justice of the peace, residing near the place where the offence should be committed, might hear and determine any offence against that act which subjected the offender to any pecuniary penalty not amounting to £50, and to convict &c. And it appears that Lord Kenyon, in giving judgment, said, "It is clear that the legislature inserted this clause for the benefit of the prosecuted; and they enacted that when a party should incur one of the smaller penalties of the act, he should be sued before a magistrate, in order to prevent his being saddled with the unmerciful costs of a merciless prosecutor. I think we are acting up to the full intent of the legislature, in saying that these penalties can only be recovered before a magistrate." And Mr. Justice Ashhurst, who also expresses himself in concurrence with Lord Kenyon's judgments, says, "generally speaking, this court cannot be ousted of its jurisdiction, but by express words, or by necessary implication, any more than an heir-at-law of his inheritance; the necessary implication in both instances is engrafted in the general rule." And then he says, "nothing can be clearer than the intention of the legislature in this instance." Now in that case, power to sue for the £10 penalty was given to the prosecutor, which applied to the lower courts. The act for the first time created the £10 penalty; but the ground of judgment which was taken in the case of

Cates v. Knight.

[illegible] this clause, was not allowed to prevail; and Mr. Justice Bayley puts it, that nothing could be clearer than the intention of the legislature. Therefore the case, that is the case which is a subsequent case, as to which much serious consideration does take place, the authority of the case of *Lyon* and *Candish*; as to which the question to be considered is, whether the intention of the legislature was sufficiently apparent upon the statute, where there are words, and no negative words, that the legislature has declared the intention in those words of the act, that the [illegible] themselves, as if their [illegible] were [illegible] and necessary [illegible] saying that the parish [illegible] at the time of passing the [illegible] was viewed with more [illegible] and more [illegible] than it [illegible] would be proper to [illegible]. Therefore it [illegible] that by law [illegible] may be [illegible] with a view [illegible] and unnecessary as [illegible] new jurisdiction [illegible] and it does appear to me, that there would be all the necessity in saying, that generally the jurisdiction of the Lord Chancellor was granted by the legislature to remain, after this question has been so clearly pointed out, that there should be a new jurisdiction, with that reason omitted."

After all, then, the great object is the intention of the legislature, as it may be collected from a reasonable construction of the act. Then, if that be so, what was the intent and purpose of the Reform Act? Undoubtedly to diminish the expense of elections, and that by providing a certain test of the right of voting: that test to be the register.

The whole tenor of the act shows that this was the object of the registration: in the first place, due and timely notice is given to all parties; next, a day is fixed for the publication of the lists; a day for claims and objections; a day for the proper appearance of the par-

ties to try those different issues; the inquiry takes place on the spot where there is every facility for the proof of facts, and thus the mode of trial is at once inexpensive and expeditious: with such opportunities of vindicating a title, or investigating and detecting fraud, therefore, no one has fair cause for complaint. The proper time for investigation is before the completion of the register, and if the name once appear there after so many facilities of questioning it have been afforded, it is a strong presumption that the vote is good.

Nothing can be more conclusive on this point than the words of the fifty-eighth section. Three questions are there prescribed as being the only questions which can be put at the poll, and then the section goes on to provide that no person claiming to vote shall be excluded from voting, except by reason of its appearing that he shall have made default in answering one of these questions, or in taking either of the oaths thereinafter prescribed. Up to this point, therefore, the register is confessedly conclusive. What then are the circumstances under which its authority may subsequently be questioned?

But first, what is the remedy of those who have been omitted from the register?

The 59th section provides, "that any person whose name shall have been omitted from any register of voters, *in consequence of the decision* of the revising barrister, may tender his vote at the election, and that the returning officer shall enter upon the poll-book every vote so tendered. Now it has already been seen that at the registration, unless the name of the party shall have appeared in the original list of the overseer, or claim shall have been duly made, no proof of a qualification even the most unquestionable would justify the barrister in causing him to be registered. And so here at the poll nothing but an omission of his name, *in consequence of a decision* of the barrister, would justify the returning officer in recording his tender: nothing but an absolute rejection

[redacted] the returning officer juris-[redacted]

[redacted] the circumstances under [redacted] the register may be questioned, [redacted] in the 6th section. It is there [redacted] the directions of the register shall be [redacted] before a Committee of the House of Com-[redacted] the votes are. That any one complaining of, [redacted] such section of return, shall be at liberty to [redacted] the directions of the register, by proving that, [redacted] the decision of the barrister, the name of [redacted] with the view of such section was improp[redacted] the name of any person who tendered [redacted] such section, improperly omitted from such [redacted] The language, it will be seen, is precisely the [redacted] which occurs in section 35, where that deci-[redacted] a condition precedent to the right of [redacted] and in the 6th, it must be taken to be a con-[redacted] precedent to the right to impeach the register. The same construction which has been fairly put on [redacted] in the one section, must apply with equal [redacted] to the other: and if so, nothing can be more clear [redacted] there must be a prior decision of the barrister, [redacted] the House can claim jurisdiction: and if so, no-[redacted] can be more clear also than that with respect to all [redacted] of objection which existed before the last day of [redacted], there must be a prior decision of the barrister, be-[redacted] the Committee can claim jurisdiction for such mat-[redacted]. The barrister's court is the tribunal, in the first in-[redacted], and its decisions the Committee may subsequently review as a Court of Appeal.

It has been contended, however, that this section was introduced for the purpose of giving Committees power of inquiring into the register generally. But if the juris-diction of the House was already so extensive and para-mount before, as, by the cases cited from Glanville, it would appear to have been, what necessity could there be

for inserting such a section, with a view to that object? In point of fact, the cause of its introduction was very different, the real object being to point out under what circumstances, and under what circumstances alone, the register could be impeached before a Committee; and this is the more obvious, because it goes on to state that the register shall be corrected accordingly; that is obviously in consonance with the opinion entertained by the Committee of the correctness of the decision of the barrister.

Much stress has been laid on the other side upon the words of the 75th section also, namely, "that all laws, statutes, and usages now in force, respecting the election of Members of Parliament, shall remain in full force." But this is expressly restricted to such laws as are not repealed or altered by this act, or inconsistent with the provisions thereof; and as no statutes are directly repealed by this statute, it is clear that the legislature must have contemplated the repeal, by implication, of all such statutes as were inconsistent with the context of the act.

Answer as to the effects likely to follow upon a limitation of the jurisdiction.

Then as to the facility and impunity which, it is said, would in this case be given to fraud. No tribunal can be more convenient or competent to detect and prevent such practices than that which sits on the spot; and had this case been duly brought before that tribunal, there would have then been a legitimate opportunity of appeal to a Committee.

Neither can it be said that there is any hardship on the candidate in being shut out from the proposed inquiry. If he had already purposed standing, before the registration, his proper season for making objections was before the barrister; if, on the contrary, he only came forward at a later period, there was the register already formed, a document from which his chance of success might be satisfactorily calculated, and by which he had every reason to know that he must stand or fall.

Lastly, as to the expenses anticipated, the process of registration will become every year better understood and less burthensome to parties, whilst to open up again be-

fore a Committee every minute question of fact, would be to do away entirely with one of the principal benefits anticipated from the act, and entail upon parties the far heavier expenses inseparable from such a long and tedious investigation.

Since, therefore, authority is not wanting for the position that the intention of the legislature is to be collected from the general language of the act; and as in this case not only the tenor of the Reform Act is uniform, but the words express, the House will proceed as well according to the most sound legal construction, as in furtherance of the most sound policy, in resolving not to go into the proposed inquiry.

Mr. Serjeant *Heath*, in answer to this objection, followed the same line of argument as had been pursued by Mr. Harrison, contending further, that as in the absence of an objection, the barrister would have no power of expunging the names even of aliens, idiots, or lunatics, it must clearly have been intended that a power to correct such palpable absurdities should exist somewhere, and that such a power was in the Committee. In illustration, he cited also the Irish Act,* arguing that if in English cases it were held that Parliament had no jurisdiction beyond what was given by the English Reform Act, in Irish cases, by a parity of reasoning, the House would have scarcely any jurisdiction at all, since in the Irish Act there was no empowering section similar to the 60th. The only cases for investigation expressly specified in that act, were those in the 59th section, and that was confined to individuals disqualified after registration by taking office, and incurring such like legal incapacities; and yet was it to be said that in consequence of such omission, Committees were not to sit, even as Courts of Appeal, in cases from Ireland?† A somewhat similar process of re-

* 2 and 3 W. 4, c. 88.

† This point was argued at length afterwards, in the *Longford* case—(see post),—where it was held that the original jurisdiction of the House was by

gistration, or rather of inrolment, of freeholders used to prevail in Scotland also before the passing of those acts; and yet, both in the Clackmannan,* Fife,† and Kirkcudbright‡ cases, questions upon the admissibility of these votes were raised, and the jurisdiction of the Committees was never impugned.

Merewether, Serjt. in reply, contended, that under the Irish Act the whole process of registration was different; that there an appeal lay from the barrister to a judge of assize; and that as the language of the empowering or restricting sections was there perfectly different also, no decision that might hereafter be come to upon that act could bear greatly on cases like the present. Then, as to the Scotch cases cited, the real question there was, whether certain qualifications, with regard to which a power of enrolment was given, together with an appeal to a court below,§ could, after a certain period of enjoyment, be inquired into before committees, and the better opinion was, that the House had no jurisdiction. Finally, however just and proper may have been the jealousy heretofore entertained by the House of all infringements upon its jurisdiction, it must not be forgotten that here the case is very different. In Glanville's time, and in many of the other instances upon record, those infringements were apprehended from without; and it was against the encroachments of the crown, or of the courts of law, that so much vigilance was so reasonably exer-

no means restricted by the Irish Act. That decision has been subsequently confirmed in the Galway case; and as the principal difference between the two acts is the omission from the Irish of any thing which corresponds with the 60th section of the English Act, and as that difference was in each case forcibly pressed upon the Committees, it is reasonable to suppose that their determinations were materially influenced by that consideration.

* 2 Douglas, 345.

† 4 Douglas, 179.

‡ 1 Peck. 439.

§ See 16 Geo. 2, c. 11; also the Ayrshire, 3 Luders, 316, and Elgin case, 3 Luders, 329. See also the note upon the decisions in the Irish Committees, post.

cised. But here, for the furtherance of public convenience and justice, we have Parliament itself, by this act, consenting to part with a portion of its own power, in such a manner too that no possible jealousy can arise with regard to any interference from an improper quarter. It is the House which has delegated this authority to the revising barrister, and it is to the House which is secured the right of correcting any error or abuse arising out of that delegated authority, by the reservation which they have made to themselves of the power of reviewing his decisions as a court of appeal.

Held that the committee has no jurisdiction to inquire into a vote upon the register, to which no objection was taken before the revising barrister.

The Committee resolved, "that it being admitted that no objection had been made to this voter before the barrister, and his name appearing upon the register, they deem themselves precluded from entering into the question of his vote."

The counsel for the petitioner then proposed to go again into the case of *Thomas Flight* on another ground. It was now contended, that as a question had been raised upon the validity of the notice in this case in the Court below and decided, it fell immediately within the provision of the 60th section of the act; that this was in fact a "name which was improperly retained on the register *in consequence* of the decision of the revising barrister;" and that notwithstanding the preceding resolution in *Tomlinson's* case, the Committee here had unquestionably jurisdiction.

A decision by the revising barrister upon the validity of a notice of objection, is not such a decision as gives the committee jurisdiction to go into the merits of the case.

On the part of the sitting member it was contended, that the question before the revising barrister had been simply as to a matter of form; that the notice having been held bad had been considered as a nullity; and that that preliminary objection had effectually prevented any inquiry into merits in the Court below. The parties, therefore, who through their own negligence in serving a defective notice, had been precluded from going into the case there, were not in a condition now to assert that the judgment on the point of form was such a decision of the

barrister as would justify the Committee in instituting an investigation into the validity of the vote.

The Committee decided that the petitioner was not entitled to go again into the case of Thomas Flight.

A new class of cases was now brought forward upon the ground of disqualification, by receipt of alms between the last day of July preceding the registration and the day of polling.

Thomas Barker's case.

The first name on the poll objected to on this account was that of *Thomas Barker*.

Receipt of alms between the time of registration and the time of polling, is a case within the jurisdiction of the committee.

A witness having been called to prove the payment of parochial relief to this voter within the above stated period, the counsel for the sitting member objected to the receipt of this evidence.

Argument against the jurisdiction.

Mr. *Russell*.—The votes of persons thus situated are not within the jurisdiction of the Committee. In this case there has been no decision of the barrister; the question in fact has altogether originated subsequently to the time of which he can take cognizance. Before the passing of the Reform Act the period within which the receipt of alms would have disqualified was twelve months; by the 36th section of that act twelve months is also the period fixed. Formerly the twelve months were to be computed back from the day of election; now they are to be computed back from the last day of July. But if the position now contended for be admitted and an inquiry is to be made as to the disqualification by relief between the last day of July and the election, the period may be extended far beyond the twelve months, which will be a great hardship upon the voter, and what was never contemplated by the legislature. Suppose the election not to take place till December, the period will then be sixteen months; and it is obvious that it might be carried farther still.

On reference to the 32d and 33d sections of the act, by which sections ancient rights of voting are preserved,

it will be seen that in speaking of the time when the qualification must be complete, the words are, "unless he shall, on the last day of July, be qualified in such manner as would entitle him then to vote if such day were the day of election:" and it is obvious that this principle runs uniformly through the act; so that henceforth in all cases, the true question for consideration will be the state of the right on the last day of July, and not on the day of the election.

But besides this, the words of the 36th section, which attach a disqualification to the receipt of parochial relief, are express; they state that "no one shall be entitled to be *registered* as a voter in cities or boroughs who shall, within twelve calendar months next previous to the last day of July, have received parochial relief." Now here the penalty imposed is a disqualification for registration; it is evident that no consideration is at all entertained of what may happen after registration, that being perfectly immaterial: the last day of July then is the test day, and beyond that day the Committee has no power to inquire.

Argument in support of the jurisdiction.

Mr. *Harrison* for the petitioner:—If the construction contended for be adopted, this act, instead of tending to amend, must effectually injure the representation of the people; for there is no saying to what extent the admission at the poll of persons utterly incapacitated for voting might not be carried. Lunatics, aliens, paupers, officers of government, wherever their respective incapacities have been incurred since the last day of July, will henceforth claim a right to exercise the franchise. It is admitted that Committees have a power of investigating bribery which may have occurred since the registration, and the bribery oath, it is well known, must since the passing of 43 Geo. 3, c. 74, be administered at the poll immediately before voting, although prior to that act it was allowable to take it antecedently before the Commissioner. Now the object of that alteration was to shut

out the possibility of receiving a bribe intermediately between the oath and the polling, and so here also the same caution should be observed in preventing the receipt of parochial relief, or at any rate in disfranchising those who do receive it, between the registration and the election.

The moral difference between the receipt of a bribe, and the receipt of alms, undoubtedly is great, the one being the result of corruption, the other being superinduced sometimes by improvidence, sometimes by misfortune, but in both cases the incapacitating principle is the same; in both, something has supervened since the registration by which the *independence* of the votes has been destroyed, and that is in reality the test.

But it is said that the language of the 32d, 33d, and 36th sections limits the time of inquiry to the period antecedent to the last day of July. Now if this were true, nothing could be more mischievous: but taking the act together as a whole, and interpreting it as the Committee is bound to interpret a remedial act, in the manner, namely, which may best avoid inconsistencies, it is obvious that no such limitation is contemplated. It is provided by the 58th section that three questions may on request be put at the poll. The third of those questions is—"Have you the same qualification for which your name was originally inserted in the register of voters?" Of the word qualification in this place many interpretations have been offered, but the reasonable and plain construction is, that the elector should be as well entitled to vote at the time of polling, as he was at the time of registration. Now it is quite clear in the case of a £10 occupying householder, that if he had in the mean time parted with his house, he could not answer that question in the affirmative; he must still retain the same property, and if so, it is at least as essential that he should retain the same legal capacity, which in many sections of the act* is made essential to the exercise of the franchise, and which in all cases is fully as much part of the qualifica-

* See 2 W. 4, c. 45, s. 18, 19, 20, 21.

cision, though the question arose upon the admissibility of evidence.

Resolved that the committee has such jurisdiction, and that such relief is a disqualification.

No further evidence being offered, the Committee then decided that the vote of Thomas Barker was a bad vote.

William Kemp's case.

The counsel for the petitioner next objected to the vote of *William Kemp*, described as a labourer in White Horse-street, householder.

Payments for labour from the parish fund at a lower rate than the usual run of wages amount to such parish relief as disqualifies.

This was the first case in which it was contended that payments for labour, under certain circumstances, amounted to parochial relief. The substance of the facts proved was as follows:

Between the last day of July and the election, Kemp had applied to the directors of the House of Industry, a parochial board at Bedford, saying that he wanted work. Work was, in consequence, given him, by their order, and he was paid one shilling and fourpence a day from the poor's rate, according to a scale made by the directors. No other man but a pauper could have been got, at that time, to do the work at that price.

There were two books kept by the officer of the board: one, the "relief book," in which were entered all sums given as relief, without any labour in return; the other, the "labour book," in which were entered all payments, such as this, for labour actually performed.

Mr. *Ryland*, for the petitioners:

This payment for labour amounts to parochial relief within the 36th section of the Reform Act.

It may be contended, on the other side, that there is a distinction between money given as alms, and money paid, as in this case, by the parish officer, at the command of the governors of the House of Industry, for labour done.

But there is in law no such distinction. According to the 43d of Eliz. c. 2, labour is the only proper method of giving parochial relief to such as are competent to labour. By the words of the statute, the overseers are

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[illegible] This labour can neither be put on a foot-
[illegible] work mentioned in the statute of Elizabeth,
[illegible] labour the sort of relief destroying the inde-

pendence of the voter contemplated by the 36th section of the Reform Act.

The Committee resolved that the vote of William Kemp was a bad vote.*

John Skilliter's case.

The case of *John Skilliter*, described as a smith.

This was also a case of relief by payment for labour, but the facts were different.

Payments for labour under the same circumstances as in the preceding case, the payments also varying in proportion to the size of the labourer's family, disqualify.

The voter had applied to the parish for work, and had been employed by them for two days, between the last day of July and the election, at the rate of one shilling and twopence a day. According to the usual run of wages in Bedford at that time, he would have earned in his trade two shillings a day. But here he was employed by the parish in digging; he was paid according to the same scale as in Kemp's case. He was a single man, and paid accordingly, it being the practice to pay married men with children something more, in proportion to the number of the family, 15*d.* where there was only one child, 16*d.* where two, and so on, although the work done might be precisely the same. A labourer hired for digging in any other than parish employ, would at that time have earned 10*s.* a week.

The Committee resolved that the vote was bad, and intimated that the scale of labour had influenced their decision in Kemp's case also.

Reuben Hedge's case.

Payments for the labour of the voter's children, no application having been made to the parish by the father, amount to a disqualification.

The case of *Reuben Hedge*, described as a brickmaker.

This was another case of relief by payment for labour, the facts of which varied from the preceding.

The voter resided in Bedford, but belonged to the parish of Wellington, about four miles from Bedford. His two sons, the one twelve, the other fourteen years of age, had come by themselves and applied to the overseer of

* See the additional facts, and their decision in *Skilliter*'s case, post.

The case of *John Simmond.*—This vote was objected to on the ground of relief given to his family by the parish, during his confinement in the Lunatic Asylum, between the last day of July and the election: it appeared, also, that the governors of the Asylum looked to the parish for payment of the voter's expenses whilst there.

John Simmond's case.

Parish relief given to the family of a person confined in the lunatic asylum, the governor looking also to the parish for the expenses of the lunatic, disqualifies.

It was attempted to distinguish this case from common instances of relief, on the ground of the extraordinary and unavoidable nature of the visitation, as in Hazell's case.* But the Committee held the vote to be bad.

The case of *Robert Wiltshire.*—To this voter relief had been given *in money* for more than three weeks, during which he had been ill of the cholera. He was a man with a family, and the amount of the payments varied in consequence. The surgeon of the House of Industry reported all cholera patients, and they were then relieved at the expense of the parish with medicine and money, where it was required. In this case application was made for relief in consequence of the cholera, and it was accordingly given both in medicine and in money.

Robert Wiltshire's case.

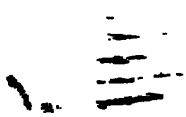
Parish relief by money and medicine, in a case of cholera, disqualifies.

The cholera had not prevailed very fatally at Bedford. The payments were made between the registration and the election, and there was an entry in the relief book stating that they had been granted in a case of cholera.

Heath, Serjt., for the petitioners.—This assistance having been rendered to the voter under a visitation so extraordinary as that of cholera is not to be looked on in the light of ordinary parochial relief, which alone is the sort of relief which could disqualify a voter. Upon this principle it has been held, that relief given in cases of small-pox did not disqualify. The *Cirencester* and the *Cricklade* case,† were both to this effect, and in the latter the absolute expenses inci-

* 1 Peck. 548.

† 2 Luders, 364; 2 Fraser, 453.



there was a disinclination to receive assistance, from a fear that it might disqualify voters at the next election; and that upon this public notice was given by the Board of Health, which induced parties to be attended by the parish surgeon, on the express condition that it should not interfere with their franchise. This he contended would bring the voter within the principle established in the Cricklade case.

Merewether, Serjt., objected to this evidence, contending that as the relief here was by money, and that medical attendance was not at all in question, the fact if proved would be entirely irrelevant.

The Committee decided that the evidence should not be received, and that the vote was bad.

Several other cases were struck off on the same grounds.

John Brocket's case.

Parish relief by medical attendance (query, whether in a case of cholera) disqualifies.

The case of *John Brocket* disclosed facts somewhat different, being a case of medical relief.—The voter was the servant of a respectable tradesman, and in December, 1831, some months before the cholera broke out, had called in a medical man to attend his child, telling him that he himself would pay, and that it should not be put down to the parish; in August, 1832, the same surgeon bled his wife, nothing was said about paying, but nothing was said either about putting it down to the parish.

In October the cholera in a slighter form broke out in Bedford, and general directions were given to the same surgeon to attend any one who would apply. The voter being attacked by this disease applied for attendance, and his name was entered in a book in which all cases of that kind were to be put down, by order of the Board of Industry; that book contained other entries which were not parish cases; but up to September, 1832, all were parish entries.

The surgeon was paid for the cholera patients by the parish: but soon after that, in the winter, the voter had

asked him for the bill for attending his child, his bill generally, but it had not yet been paid.

The family had been attended some time before the period of the child's illness at the parish expense.

Upon this *Heath*, Serjt., contended, that the application for the bill in the winter was solely for the purpose of enabling Brocket to vote, and that the entries being in the parish book were conclusive.

Merewether, Serjt.—This is not a case for disfranchisement: a respectable man, the servant of a respectable tradesman, calls in a surgeon to his child as a private patient. Next, without any intermediate attendance, the wife in August goes to him and gets bled: it is not proved that she went with her husband's cognizance, at any rate. Nothing is said about payment, and the reasonable legal construction is, that this was in continuance of the first contract, and the surgeon might have maintained an action against the voter for both these attendances.

Then comes the illness of Brocket himself in October, and with respect to that, it is proved that there were orders to attend every one so attacked, whether parishioners or not, and no entry in a parish book by a surgeon or any one else could make a man a relieved pauper, unless it were with his own assent.

The Committee decided that the vote was bad.*

* This was a case of relief by medical attendance only, but whether by medical attendance in a case of cholera does not clearly appear, the Committee not having intimated the grounds of their decision. The assistance afforded the wife in August, it will be observed, was very slight, and it is presumed that, upon the facts disclosed, there would have been in law a good continuing contract as a private patient, so as to have fixed Brocket with the surgeon's charge for that attendance. If a tradesman supply an infant under the father's roof, with the cognizance of the father, and there be afterwards a second employment, the second supply would clearly be referred to the liabilities existing under the first; the reasonable inference therefore appears to be that this was a decision on a case of medical relief solely in cholera.

The case of *Thomas Lawson*. The objection taken was, that the voter had received parochial relief within twelve months previous to the 31st of July, 1832.

Thomas Lawson's case.

To prove that a discussion on this vote had been raised before the revising barrister, the overseer was called, who produced the notice of objection. This notice appeared on the face of it to be bad, the place of abode being omitted. It did not appear, however, that that point had been taken before the barrister, who had accordingly gone into the merits of the case, and adjudicated upon it.

Although a notice of objection be on the face of it bad, still, if the revising barrister shall have gone into the merits, the Committee will revise his decision as a court of appeal.

Upon this *Heath*, Serjt. and Mr. *Ryland* contended, that the notice being informal, the barrister had no jurisdiction; that the case therefore must be taken as if never discussed before him; and that the Committee consequently would deem themselves precluded from inquiry.

Merewether, Serjt.—This is perfectly different from *Flight's* case; there the barrister treated the notice as a nullity; here he has gone into the facts—there was a discussion and a decision. We appeal, therefore, to the Committee for the purpose of showing that decision to be incorrect.

The Committee resolved that the parties might go into the merits of the case.

In the course of examination a witness was asked, whether the voter, when under examination before the barrister, did not make a certain statement in support of his vote?

What a voter may have said before the revising barrister in support of his vote, cannot be given in evidence by a third party before a committee.

Merewether, Serjt., objected to this question.

Heath, Serjt., contended that it had been frequently put in the Petersfield case.

Merewether, Serjt., replied that there it was put in cross-examination, in order to shake the claim of the

party. What a voter says against his own interest is evidence; what he says in support of it is not.*

The Committee resolved that the question could not be put, and upon further evidence decided that the vote was bad.

A similar decision in the case of Joseph Hodges.

In the case of *Joseph Hodges*, who was objected to as having been relieved by medicine, a question was put as to a certain declaration made subsequently by the voter to the medical man with regard to his not considering the attendance to be on account of the parish; when, upon objection that this also was a declaration by the party in support of his own vote, the Committee would not allow the question to be put.

Evidence in the case of Richard Turner deemed sufficient.

In the case of *Richard Turner*, who was objected to on the same ground, although there was no entry in the surgeon's parish book, and that gentleman could not undertake to say he had reported him, the Committee, upon the statement of the surgeon, that he considered him as a parish patient, and that the voter had not yet paid, held the vote to be bad.

John Cavit's case.

An individual occupying one of the almshouses, and taking other benefits from Harpur's or the Bedford Charity, is not thereby disqualified as being in receipt of parochial relief.

The case of *John Cavit*, described as an "inhabitant householder." This voter was objected to on the ground of his having taken the benefit of Harpur's, or the Bedford charity, which it was contended was a receipt of alms within the 36th section of the Reform Act.

It had been decided by a Committee in 1774, that persons enjoying the advantages of this charity were not disqualified from voting for the Borough of Bedford. The nature of the institution as it then existed is fully set out in the report of that case.† Since that period, however, there had been a considerable addition to its funds, and new regulations had been introduced by act of par-

* The Salisbury Committee subsequently held, that a voter, under certain circumstances, might be examined in support of his vote. See *post*.

† 3 Douglas, 123.

liament. The inscription over the gate was, " for poor decayed housekeepers;" and the almshouses were allotted to people of that description; no rates or taxes were charged on these buildings, and they were insured at the expense of the trustees. The pensioners received 15*s.* a week for their support, and 3*l.* a year for clothes; were provided with medical assistance in case of sickness, and were removable at the discretion of the trustees: 500*l.* a year was also distributed in Hall-money, but the individuals who lived in the almshouses received no part of that sum.

It had been the practice to admit individuals in decayed circumstances, who were not paupers, in order to prevent their becoming so, and some amongst them were persons possessing other property.

Mr. *Ryland* in support of the objection. It is intended on the other side to rely on the former resolutions respecting this charity; but it has been now shown that since that time its constitution has been much altered, both by the increase of the funds and by the new regulations introduced by the act in 1826. The evidence in the case reported in Douglas showed, that the objects of the charity at that time paid parish taxes, and were of the middling sort of people, and appointed without solicitation, and that was the ground of the resolution in 1771. The subsequent decision in 1792, also went upon the same facts, there being at that time only one annual donation, and no almshouses existing. Now in the present state of things the parties are poor decayed housekeepers, they are nominated upon their own solicitation, and get a house, clothes, food, medicine, pay no rates, taxes, or insurance, and are removable, that is, are liable to be deprived of all support at a moment's notice, entirely at the discretion of the trustees. Is not this then a receipt of such alms as clearly disqualify the voter?

It has been laid down by Serjeant *Heywood* that the principle on which such disqualification is founded is,

that the receiver of such alms must be considered to be in such a state of dependence as not to have an independent will of his own, or to be capable of exercising an unbiassed discretion in giving his vote. The relief then afforded in this case is just of a character to produce that effect, the parties are or ought to be "poor decayed housekeepers," and no designation can more entirely mark their state of destitution. The determination of the former Committee applied only to those who received Hall-money, for that was then the mode of relief; the case of the present voter is very different, he does not receive Hall-money, and does not therefore come under that class, but enjoys, on the contrary, relief so much more extensive that the vote must be struck off.

Merewether, Serjt.—There have been already two decisions of former committees upon this charity, and as there has been no material change in its constitution since that time, those decisions are entitled to great weight, and should now be confirmed.

There has been no alteration in the nature of the fund, or in the objects of the charity; the only effect of the acts of parliament has been to alter the mode of distribution. The resources of the establishment have increased, and with them the advantages enjoyed by the pensioners; if it was decided then by a former committee that the receivers of the Hall-money, which much more nearly resembled alms which would disqualify, were not incapacitated from voting, *à fortiori* the present individuals, who have a certain enjoyment for life, cannot be held to be disqualified. The established principle with regard to alms is, that assistance from a private source does not disqualify, unless it be given in aid of the parochial funds, as in those cases where such alms are distributed by the parish officers. Assistance from a public fund does not disqualify; if it were otherwise, all who partake of the advantages of the foundations of Winchester, the Charter-house, or any fellow of a college at our

universities, might be rendered incapable of voting. The objects of the charity at the time of the former decision, as now, were poor "decayed housekeepers:" that designation never did mean paupers; the intention of the founder was to prevent distressed individuals from becoming paupers. The law does not preclude poor persons from voting, but only such poor persons as have been in the receipt of parochial relief: the express purpose of this institution is to prevent the necessity of applying for such relief: there is, therefore, in this case no disqualification.

The Committee decided the vote to be good.

Point of evidence.

An objection was taken in this case to the admissibility of evidence that other persons belonging to the charity had independent property; but the Committee held, that it might be received for the purpose of showing the general nature of the institution.

This closed the class of cases on disqualification by relief.

The case of *Robert Henry Gibbon*, described as a "householder."

If a voter be on the register, a wrong description of his qualification at the poll, in answer to an illegal question, will not affect his vote.

It appeared in evidence that there is in the borough of Bedford an old reserved right of voting enjoyed by the inhabitant householders, and that at the election the poll clerks asked each voter as he came to poll, (having received instructions previously from the town clerk to that effect,) whether he claimed to vote as an inhabitant householder, or in respect of the new £10 occupation franchise, and that an entry was made accordingly on the poll book. Those who claimed in respect of the old franchise were entered thus—"householder;" those who claimed in respect of the new, thus—"house."

Gibbon was asked in what right he claimed to vote, and upon his answering as a householder, his name was accordingly placed in the householder's column on the

poll; but on reference it was found that his name did not appear on the householder's list in the register.

Mr. *Follett* in support of the objection.—Gibbon having voted in respect of a qualification for which he was not registered, his name must be struck off the poll.

By the 44th section of the Reform Act it is provided, that the overseers shall make out two lists, one of persons entitled to vote in respect of the new £10 qualification, and a second of "all other persons, except freemen, who may be entitled to vote by virtue of any other right whatsoever." Should the overseer neglect this duty, the party aggrieved has a remedy pointed out in section 47, which directs him to send in a claim according to Form 4, Sched. I., which will effectually secure his due registration on the proper list. After the revision by the barrister, the lists are, by section 54, to be copied into a book in the manner there specified; and that book, thus constituting the register, is to be the test of the qualification of voters at the election.

Now in case Gibbon had a claim to be registered as an inhabitant householder, this is the course he ought to have pursued. It is possible, indeed, that he may appear on the other list of £10 occupiers; but here we are to look only for him on the register in the character which he assumes to himself at the poll, namely, that of an inhabitant householder; and as we do not find him on the register in that character, it is clear that he could have no right to vote as such.

Thus much for the case as it is affected by the Reform Act. But even according to the law of Parliament as it existed before the passing of that act, this vote cannot be supported. According to that law it is clear, that if a person heretofore possessed two rights of voting, and tendering his vote in one character, failed afterwards in establishing it before the Committee, he could not then claim to remain on the poll in another character;* and

* See the case of Seaforth, Rogers, 201.

not only that, but no evidence could be admitted to correct the description entered by the poll clerk.* So here the voter is described upon the poll as an inhabitant householder, and having no right to vote as such, he cannot now alter the description, and fall back upon another right; in other words, his vote cannot stand at all.

Upon the conclusion of this argument the counsel for the sitting member stated, that they had only put in as evidence one list, namely, that of the inhabitant householders, their object being to oblige the petitioners' counsel to put in the £10 Occupiers List, and thus to gain the reply.

The different lists of voters returned by the revising barrister constitute one register, and one list cannot be put in evidence without the other.

In point of fact three lists, namely, that of the freemen, that of the inhabitant householders, and that of the £10 occupiers, each forming one book, (the books nevertheless being tied together at the back,) had been handed in to the Committee.

The Committee held, that the three lists made but one register, and that therefore all being considered as already put in, there could be no reply.

Upon reference to the register, it there appeared that Gibbon's name was entered upon the list of the £10 occupying voters.

Heath, Serj. in support of the vote.—It appears that there is in Bedford an old constituency of inhabitant householders, differing only from the new voters, holders of £10 houses, in the value of the tenement.

Now this man being asked, do you vote as a householder? answers, yes; and truly, for it will be seen that he appears on the lists of the new voters as a £10 householder. It is very possible that there might have been an understanding between the town clerk and his deputy as to the peculiar meaning they attached to the word householder; but if they meant to confine that denomination to one list, they should have put the question specifically, are you an inhabitant householder? But in point of fact, on referring to the 58th section of the Reform

* Middlesex case, 2 Peck. 52.

Act, it will be seen that they had no right to proceed in this manner at all. The only question which could have been legally put on such a subject is the third in that section, namely, "have you the same qualification for which your name was originally inserted in the register?" And even this cannot be put except upon request in behalf of a candidate.

In this instance, however, had that form been adopted Gibbon could have answered in perfect truth, that he still had the same qualification, namely, that of a £10 householder. They have here then put a question both informal and illegal, and such being the case, such a proceeding, it is submitted, cannot bind the voter.

The Committee resolved that the vote was good.

Thomas Harper's case. An abandonment, between the time of registration and of polling, of the house which gives the qualification, amounts to a disqualification.

The case of *Thomas Harper*, described as an inhabitant householder. This man had been omitted from the overseer's original list, but having sent in a claim, and the case having been heard before the barrister, he had been inserted in the register.

It appeared, however, that at the time of polling he had quitted the house for which he had been registered. There was a great deal of conflicting evidence as to the circumstances under which he had given up the premises, but the fact that he was not in possession at the time he voted was clearly established.

Merewether, Serjeant, objected to the inquiry, contending that the register was conclusive. To this it was answered, that this was one of the cases contemplated by the 58th section of the act, which empowers the returning officer to put, on request, the third question, "have you the same qualification for which your name was originally inserted in the register?" And that as this was a want of qualification which had been incurred since the registration, and which existed at the time of polling, the Committee had full jurisdiction.

The Committee decided the vote to be bad.

John Stock's case. Question whether there was a sufficient continuing interest to distinguish this case from the former:—Held, that there was not.

The case of *John Stock*, described as an inhabitant householder. The voter had quitted the house for which he had been registered on the 21st November. He was succeeded on the same day by a widow, who did not begin to pay rent until the 21st December: it did not appear who paid the rent during that month. When the widow was put into possession she was told by the landlord that she might stay whilst *J. Stock* gave it up.* The election was on the 12th of December.

Upon this *Heath*, Serjt., claimed that the voter should be struck off, as not having been in possession of that house at the time of voting. There was no proof that he paid the rent; besides which, he had given up his exclusive right to the outer door, and that is the test of a householder.†

Merewether, Serjeant, contended that *Stock*, although he had quitted the house, still held it of the landlord at the time of the election, and that that was sufficient to distinguish this case from the last.

The Committee decided the vote to be bad.

Thomas Chowne's case. Where there is a doubt as to the person meant to be designated on the register, in the absence of any objection taken at the registration, the presumption is in favour of the person who voted at the preceding election.

The case of *Thomas Chowne*, described as Thomas Chowne, of Higham Ferrers, Northamptonshire, miller, freeman.

The town clerk proved the admission of a Thomas Chowne as a freeman in 1793, and that there was no other Thomas Chowne on the corporation books. A witness was then called, who proved that he had been admitted a freeman himself on the same day as Thomas Chowne, that he knew him well, and that he had been dead thirty-eight years; he also stated, that he knew another Thomas Chowne, who lived at Higham Ferrers

* This evidence was objected to, but upon argument that it was a declaration accompanying the act of giving possession, and also part of the term of the contract, the Committee held it to be admissible.

† Cirencester case, 2 Fraser, 449. See also Rogers on Elections, p. 164.

Mill, the nephew of the deceased, and that this nephew voted in 1830, and that no objection was taken to him before the assessor.

Merewether, Serjt. contended, that as in this case no discussion had taken place before the barrister, the notice having been, as in *Flight's* case, deemed informal, that the Committee had no jurisdiction.

Heath, Serjt.—We do not impugn the decision in *Flight's* case, but our objection here is not to the register, but to the poll. The register was formed from the list of freemen delivered in by the town clerk, and we contend that the Thomas Chowne mentioned in that list did not appear at the poll, but that the nephew appeared and personated the uncle.

Merewether, Serjt.—To state that the objection is to the poll and not to the register is a fallacy. We assert that the Thomas Chowne on the register was the Thomas Chowne who voted. It is clear that he voted as a freeman in 1830, and then before the last election a list is published containing his name: the presumption therefore was, that the name on that list was meant to apply to him. That being so, the proper time for raising the objection was before the barrister, and then on proof of his not being entitled to vote, his name would have been struck out. But it is contended that the person designated in the register was Thomas Chowne the uncle: then as he had been dead for years, care should have been taken to apply to the barrister to expunge the name, which by the 50th section of the Reform Act he is empowered to do. No objection, therefore, having been duly taken, and no application having been made, it is now too late to interfere with the register. The designation there inscribed applies exactly to the voter, it is proved that he voted before in 1830, and the fair presumption therefore is, that he is the person meant.

The Committee decided the vote to be *good*.

Henry Taylor, freeman.

Henry Taylor's case.

The point opened in this case was, that the voter was not resident at Bedford, or within seven miles thereof, at the time of polling; but it appearing that the words of the objection drawn and delivered in by Counsel, were, that "Taylor was not resident at Bedford, or within seven miles thereof, at the time of the signing the register," the Committee held that the case must be confined to that allegation.

Non-residence between the 31st of July and the time of signing the register, is no disqualification in a freeman.

Mr. *Harrison* then tendered evidence of that fact, contending that if a party become disqualified at any time after the last day of July, his vote must be held bad.

Merewether, Serjt. contended that the evidence should not be received in a case of this kind, arguing that an inquiry into the residence of the voter at the time of signing the register would be altogether inconclusive, as though disqualified then, he might be qualified at the time of polling. The questions which could be put were, 1. Was he disqualified on the last day of July? and that should have been discussed before the barrister. 2. Was he disqualified at the time of polling? and that was not raised at present by the words of the objection: any inquiry, therefore, as to the day of signing the register would be perfectly irrelevant.

The Committee decided that they would not go into the question of non-residence between the 31st of July and the day of signing the register.

Mr. *Harrison* proposed to go into the case of *Charles Eagles*. There had been three notices of objection to this vote served by agents of different candidates, but at the registration the first having been held bad the others were withdrawn, although they were good.

Charles Eagles' case.

Three notices of objection having been served, and, on the first being declared bad, the two others being withdrawn, held, that such withdrawal did not

Merewether, Serjt. objected that the Committee had no jurisdiction to go into this case; it is only distinguished from Flight's by the fact that there were two other no-

establish such a case of fraud as to give the Committee jurisdiction to go into the vote.

tices; but as those notices were withdrawn they could not have been acted on, and must be considered a nullity.

Mr. *Harrison* submitted that this was clearly a case of fraud: that it was obvious, from the withdrawing of the good objections immediately on the decision, that the notice served by the other candidate was informal, that there was collusion, and that as fraud vitiates all transactions, the Committee would consider them as not withdrawn, and go into the inquiry.

Merewether, Serjt. replied that no fraud had been proved, and that the notices having been withdrawn on no one appearing to support them, the barrister was, by the 50th section of the act, bound to retain the name on the list, and that being so, that the question could not now be raised.

The Committee decided that the proposed evidence could not be gone into, and that the vote was good.

William Wilcox's case.

A check clerk, retained and paid by one candidate, cannot vote for another candidate. Such incapacity accruing since the registration, is within the jurisdiction of the Committee.

The case of *William Wilcox*. The voter had been employed at the election, and paid as a check clerk for Mr. Whitbread.

Mr. *Russell* submitted that this case was within the 7 & 8 G. 4. c. 37. s. 1. by which it was provided, "that any person employed at an election as counsel, agent, attorney, poll clerk, flagman, or in any other capacity for the purposes of such election, or within six calendar months before, or within fourteen days after, and who should at any time, either before, during, or after such election, accept or take from any such candidate or candidates, or from any person whatsoever, for or in consideration of or with reference to such employment, any sum or sums of money, retaining fee, office, place, or employment, or any promise, &c. should be incapable of voting at such elections.

Heath, Serjt.—This goes the length of saying that a

check clerk retained by one candidate cannot vote for another candidate. The provision of the act must be considered, and the mischief it was designed to remedy: the mischief was the hiring a number of voters as clerks, who would thus be obliged to vote for the person hiring them; there is nothing to prevent their voting for the other candidate. Then again there is no mention in the act of check clerks; but it is said, that the words "other capacity" will include them. Now it is a well-established principle that when a statute enumerates distinct classes, and words of general description follow, that those words will not include persons of a superior degree to those specifically mentioned. The 13 of Eliz. c. 10. speaks of "deans, prebendaries, parsons, vicars, and others having spiritual promotion;" and it was held, that these last words would not include bishops. Here a check clerk is certainly superior to the last class specifically named in the act, he is not included therefore under the general expression which follows.

The Committee decided that the vote was bad.

The Marquis of Tavistock's case.

The case of the *Marquis of Tavistock*—described as a freeman.

The objection was, that at the time that he voted on the 12th of December he was a peer of the realm. The Gazette of the 11th of December was put in, and the following extract read:—"Whitehall, December 11th, 1838. The King has been pleased to order a writ to be issued under the great seal of the United Kingdom of Great Britain and Ireland, for summoning Francis Russell, Esq., commonly called the Marquis of Tavistock, to the House of Peers, by the style and title of Baron Howland, of Streatham, in the county of Surrey." A clerk from the Crown Office then produced the king's warrant, which was read to the following effect, directing the Chancellor "to make out, or cause to be made out, forthwith a writ of summons, under the great seal of the

It is the writ of summons itself, not the warrant for issuing that summons, which confers the dignity of the peerage. Where there was no proof, therefore, that the writ had issued, the vote was held to be good, as being the vote of a commoner.

United Kingdom, &c., to be directed to our trusty and well-beloved cousin Francis Russell, chevalier, commonly called the Marquis of Tavistock, by the name and title of Baron Howland, &c., to be personally present with us, and with the prelates, peers, and barons of our realm, at our Parliament to be holden at Westminster on Tuesday the 29th day of January next, in as ample and honourable manner and form, to all intents and purposes, as any baron of this realm hath at any time heretofore been enrolled or created by writ."

The Marquis, having on his return from the poll received this Gazette, immediately wrote the following letter to the returning officers.

"Gentlemen, I think it right to state to you, as the returning officers for the town of Bedford, that since my giving my vote this day for Messrs. Whitbread and Crawley, I have received a copy of the Gazette, by which it appears that the king's writ calling me up to the House of Lords had been actually issued; of this I was wholly unaware at the time of voting. It is, therefore, my wish that my name should be withdrawn altogether from the poll-book, if it can be done consistently with the law and practice of elections, but I must submit this to your discretion. I remain, &c."

No alteration, however, was made in the poll.

Mr. *Ryland.*—There are many resolutions of the House, showing that a peer has no right to vote at the election of Members of Parliament: they are all to be found in Rogers on Elections,* and the same principle has been in every instance invariably vindicated.

There is only one case in the Journals† where two peers had voted, and that was for the city of Winchester, and the point was given up afterwards by counsel. Here the Marquis of Tavistock was not only a Peer at the time, but, conscious of the fact, he writes expressly to get his name struck off the poll.

* Pages 85, 86. † 10 Journals, 447.

Mr. *Russell.*—The Marquis was not a peer at the time he voted, for no writ had then issued. But even if it had, he could not have been considered a peer until he had taken his seat in the House of Lords. In Lord Abergavenny's case,* where the point was raised whether a private person, who had been called to the House of Lords by writ, but died before he took his seat, was a baron or not, it was resolved by the Lord Chancellor and Judges, that the direction and delivery of a writ did not make a man a baron or noble, until he came to Parliament, and there sat according to the commandment of the writ, for until that, the writ did not take effect.

That decision has never been overruled; and in the same manner in order to make good a title by descent to a barony, created by writ, proof must be first given of the first peer having taken his seat in the House of Lords under that writ.† Upon these authorities, therefore, the Marquis must be considered to have been a commoner at the time he voted.

Mr. *Ryland,* in reply.—The Marquis himself says, in his letter, that the writ had issued, and on that the objection was founded. The authorities that have been cited refer only to pedigree.

If the propositions laid down on the other side were law, every heir-apparent of a peer would retain his right of voting at elections, after the death of his father, until he took his seat in the Lords—thus enjoying at the same time the privileges of a commoner and of the peerage.

No improper conduct is imputed to the Marquis, he voted in mistake, but his vote must be struck off.

The Committee decided that the vote was good.

George Westropp's case. Application for postponement where a witness had been summoned but had not yet arrived.

The case of *George Westropp.*

This was a vote rejected by the revising barrister, and subsequently tendered at the poll. Proof was given of these facts, and then, upon going into evidence of quali-

* 12 Rep. 70. † Cruise's Digest, Dignities, vol. iii. tit. 26, sec. 52.

fication it appeared that an overseer who had been examined upon this vote before the revising barrister was not yet arrived in town. Upon this, an application was made by Serjt. Merewether, that this case might stand over until the next day, when the witness would have arrived; and it being stated that the cases of tender had been called on sooner than was anticipated, and it having been proved that the witness had been summoned, the Committee declaring at the same time that this must not be drawn into a precedent, consented to the arrangement.*

Godfrey Levi's case.
Case of an alien.

The case of *Godfrey Levi.*

The objection was, that the voter was an alien.

The result of the evidence, which was very contradictory, appeared to be, that he had been first known by his brother and another witness as a child in arms, living with his father and mother at Cölnaght, in Germany, and that he had now for many years past been living with the same brother in Bedford.

Mr. *Follett,* in support of the objection, contended that in law it was indisputable that an alien could not vote, and cited the Middlesex case.† We have here given strong presumptive evidence that this man was born *hors* the allegiance, and if so, and it be contended on the other side that his parents were British subjects, or that he was himself naturalized, it will be for them to prove it.

Mr. *Ryland* was heard in answer, upon the contradictory nature of the evidence, arguing, that nothing but absolute proof of the legal incapacity of the voter would justify the Committee in striking off the vote.

The Committee decided the vote to be good.

* This case was never resumed, as the petition was the next day abandoned.

† 2 Peck. 11.

The case of *William Fraser.*

William Fraser's case.

Evidence of disqualification differing in description from that given before the revising barrister.

This was a case heard before the barrister, and the point under discussion there was, the receipt of relief by medical assistance. The objection taken now was, that he had been relieved by money from the parish fund, and upon evidence of that fact the Committee decided the vote to be bad.*

The case of *John Taylor.*

John Taylor's case.

Relief to a child not living with the father, but unemancipated, disqualifies the voter.

This was a case of relief by medical attendance on the voter's daughter, of the age of thirty, not being at the time under the father's roof, but still not living apart so separately and independently as to be capable of being deemed emancipated.†

The Committee held the vote to be bad.

On the succeeding day, March 14, the petitioners abandoned their case.

The Committee then resolved, "that Mr. Crawley was duly elected, and ought to have been returned for the Borough of Bedford, and that neither the petition nor the opposition to it was frivolous or vexatious." The Committee reported that they had also to inform the House, that they had altered the poll taken at the election, by striking off the names of Thomas Barker, &c., (altogether forty-two persons), as not being entitled to vote.

* In the Salisbury case, post, it will be seen that the Committee confined the inquiry before them to the point raised before the revising barrister.

† See Gambier's Law of Settlement, p. 101.

CASE IV.

TOWN AND COUNTY OF THE TOWN OF SOUTHAMPTON.

THE Committee was chosen on Tuesday, March 26th, and consisted of the following members.

Lord Robert Grosvenor, (Chairman,) *Chester.*

John Briggs, Esq. *Halifax.*	Hon. Craven Berkeley, *Cheltenham.*
Lord Waterpark, *Derbyshire.*	James Talbot, Esq. *Athlone.*
John P. Plumptre, Esq. *Kent.*	Patrick Stewart, Esq. *Lancaster.*
John Ramsbottom, Esq. *Windsor.*	Hon. —— Lambton, *Durham County.*
David Ricardo, Esq. *Stroud.*	Robert Biddulph, Esq. *Hereford.*

Petitioners—Electors.

Sitting Member petitioned against—James Barlow Hoy, Esq.

Counsel for the Petitioners—Mr. Harrison, Mr. Follet, and Mr. Austin.

Agents—Messrs. Sharpe and Co.

Counsel for Sitting Member—Mr. Serjeant Merewether, Mr. Rogers, and Mr. Knapp.

Agents—Messrs. Tilson and Squance.

Petition.

The Petition stated, that at the last election of burgesses to serve in Parliament for the town of Southampton, Arthur Atherley, Esq. John Storey Penleaze, Esq. James Barlow Hoy, Esq. and James Mac Kellop, Esq. were candidates;—that, a poll having been taken, Arthur Atherley, and James Barlow Hoy, Esqrs. were declared duly elected and returned accordingly;—that the tenders of persons entitled to vote, and who tendered

The return.

their votes in favour of the said J. S. Penleaze, were rejected by the returning officers, whereby the said votes did not appear and were not recorded on the poll;—that the votes of many persons not entitled to vote were accepted in favour of J. B. Hoy, Esq.;—that the votes of several persons were received in favour of the said J. B. Hoy, though such persons were not entitled to vote, but had falsely assumed the name and character of other persons whose names were inserted in the register in force at the election, and by means of such false and deceitful personation, voted as and for such other persons in favour of the said J. B. Hoy; that such personation of voters was extensively practised by certain persons in order to procure the return of the said J. B. Hoy; and that in consequence thereof, in a great degree, the said J. B. Hoy was returned;—that several votes were received for the said J. B. Hoy of persons not registered, or entitled to be registered;—that many persons voted for J. B. Hoy who had been bribed to give their votes in his favour.

Tendered votes rejected.

Votes of persons personating others.

Voters not registered.

The petition further alleged, that persons had been permitted to vote for the said J. B. Hoy, who had become disqualified since the period of registration, or were otherwise generally, on various grounds, incapacitated;—that persons had been permitted to vote in favour of the sitting member at the wrong booths;—that the register of the said town was imperfect, the names of persons whose votes had been received in favour of the said J. B. Hoy, having been inserted therein, who (on various grounds stated in the petition*) ought not to have been inserted;—that the decisions of the revising barristers had been in many respects erróneous, the names of many persons who voted for the said J. B. Hoy having been erroneously retained on the register, and the names of many others who would have voted for the said J. S. Penleaze, having been erroneously omitted therefrom.

Voters disqualified since registration.

Register incorrect.

* It has not been thought necessary to set out these allegations of the petition in detail, as it will be seen in the sequel that this part of the petitioners' case was not gone into.

The petition then went on to state, that "the name of one Samuel Dawson, who was duly qualified to vote for the said town, and who tendered his vote in favour of the said J. S. Penleaze, was duly inserted in the overseer's list for the parish of Holy Rhood, fixed on the church door of the said parish and not objected to, but that through the negligence of the said overseers the name of the said Samuel Dawson was omitted from the list presented by the overseers to the revising barrister, and in consequence thereof was not inserted in the register in force at the said election."

Name of Samuel Dawson omitted.

Bribery and treating.

There was likewise a charge of bribery and treating against Mr. Hoy, the sitting member, and the petition, after alleging that by means of the premises Mr. Hoy had obtained a colourable majority, concluded by praying that his return might be declared void, and the said J. S. Penleaze be declared duly elected.

Objection to petition on the ground of alterations.

Before the case for the petitioners had been opened, a preliminary objection was taken to the petition itself by the counsel for the sitting members, on the ground that the petition had been altered, interlineations having been made therein, as appeared on the face of it, and that therefore it could not be proceeded in.

The fact of an alteration having been made was not denied by the counsel for the petitioners; and the alteration was stated to have taken place under the following circumstances. The petition, when signed by the petitioners, contained no allegation of bribery; after it had been forwarded to the agent in London, the parties in the country discovered what they considered to be sufficient evidence of bribery on the part of the sitting member, upon which they sent instructions to the solicitor in London to insert an allegation of bribery in the petition. There were other allegations inserted in a similar manner, but it appeared that all the additions had been made without any intention of fraud on the part of the petitioners or their agent.

The counsel for the petitioners, however, in order to obviate all further difficulty on this head, now proposed

to abandon altogether the charges to which the interlineations referred.

To this proposal the counsel for the sitting member refused to accede. They contended that not only must the part of the petition contained in the interlineation be abandoned, but that the petition itself was vitiated and could not be proceeded in.

Argument against the Petition.

Mr. *Knapp*, for the sitting member.—Both principle and precedent are decisive as to the badness of the petition. If allegations are allowed to be inserted in petitions after they have been signed by the petitioners and sent up to London, whether by the authority of the petitioners or not, the consequences will be most dangerous. It will then be in the power of an attorney to put in charges which may not only be false in themselves, but which may put a party to great expense in bringing witnesses to disprove them. Besides, if an attorney may insert allegations after the petition is once signed, he may also strike out allegations. He might even strike out the names of any of the petitioners, if he chose. In Hands on Election Petitions, a work written by an author of great experience in these matters, it is laid down, that there should be no interlineations or erasures in a petition; and a case is there cited, by which that position is sufficiently confirmed. That was the case of a petition which had been referred to the committee on the *Winfrith-Newburgh* inclosure bill. The chairman reported to the House that there was an erasure in the prayer of the petition, and the committee wished to know the pleasure of the House, and how they were to proceed.

It was ordered to be referred to a select committee to inquire by what means the erasure came to be made, and whether it was previous or subsequent to the signing the petition. Whatever may have been the result of that inquiry, this case shows how great an importance the House attaches to alterations in a petition, and that such alterations, if made previously to the signing of the petition, must be considered to be fatal. The rule of law is

in complete conformity with the principle acted upon by the House. It is well known that the insertion of provisions in a deed, after it has been signed, vitiates it. In Pigott's case, reported by Coke, it is laid down that any material alteration in a deed after it has been signed, if made without the privity of the obligee, renders the deed void. The present is a material alteration, as containing a charge of bribery, the heaviest that can be brought against the sitting member before the House of Commons. Again, by statute 9 Geo. 4, c. 22, it is directed that the petition shall be signed by the petitioners. If however persons subscribe a petition, and that petition is afterwards materially altered, it can no longer be said to be the petition which they had signed. If a person were to sign a promissory note for 10*l.* and it should be afterwards altered to 20*l.* it would not be the promissory note which he had signed. The persons therefore whose names are affixed to this petition cannot be said to have signed the petition.

Argument in support of the petition.

Mr. *Harrison*, for the petitioners.—The inclosure case referred to cannot guide the Committee, for it has not been shown what was the result of that case. Neither is the rule of law relative to the alterations in a deed, which has been referred to, at all in point, for it relates only to cases where alterations have been made without the privity of the parties. In the present case, proof can be given that the alterations were made not only with the privity, but by the positive instructions of the petitioners, and that the recognizances were put in with a full knowledge of the alterations having been made. All that can be said, therefore, is, that the making these alterations was an irregularity. In strict right, the petitioners would be entitled to go into the whole of the petition, but at all events the alteration cannot be considered to vitiate the whole petition, and the petitioners are prepared to abandon that part of the petition which was contained in the interlineation.

The Committee, after this argument, intimated an intention of taking the opinion of the Speaker as to the

effect of the alterations on the petition, and the Committee adjourned until the following day for that purpose. Decision postponed.

At the next meeting of the Committee, the Chairman observed, that before the room was cleared, he had to state to the counsel and parties, that the Committee had been in error in proposing to take the opinion of the House of Commons upon the objections raised by the counsel for the Sitting Member, because the Committee was a Court constituted by Act of Parliament, and the House could not interfere with any decision it might come to upon the merits of the petition it was appointed to try.

The Committee then proceeded to deliberate upon the validity of the petition, and after some time the parties were called in, and informed by the Chairman, that in taking into consideration the objections raised by the counsel for the Sitting Members, two points had suggested themselves to the consideration of the Committee; first, whether the additions complained of in the petition, and which were admitted to have been made subsequent to the signatures, had any effect upon the charges embodied in the additions; and secondly, what effect they ought to have on the remaining merits of the petition. Upon the first point, as the counsel for the petitioners had abandoned the charges contained in the additions, the Committee did not think it necessary to pronounce any opinion. Decision of the Committee.

With regard to the second, the Committee had decided that the additions did not vitiate the remainder of the petition, and the counsel for the petitioners were therefore now at liberty to proceed with the other charges. * Alterations held not to vitiate the remainder of the petition.

Mr. *Harrison* now opened the case on the part of the petitioners as one of scrutiny only. Case of the Petitioners.

The Sitting Member having been returned by a majority of ten only, he proposed to begin by striking off eleven votes of that majority, so as to give a majority to Mr. Penleaze; after which he proposed that the counsel for Mr. Hoy should proceed to strike off two votes, and that then each party should go on alternately striking off a vote, till the objections on one side should be exhausted. Manner of proceeding.

* See note (A), post, p. 125.

Various objections had been taken to different votes, on the ground that the voters were either legally incapacitated or not possessed of a sufficient qualification under the old or new franchise. But the counsel for the petitioners declared his intention of postponing the consideration of these votes, reserving, however, the right of afterwards going into them, should his case require it, and of beginning with a class of votes, to which the objection was, that the parties who voted, not being entitled to vote, or on the register of voters, had personated others who were on the register, but who did not vote at the election. Of these votes the petitioners would now proceed to strike off a sufficient number to leave the Sitting Member, Mr. Hoy, in a minority.

Evidence was then adduced on the part of the petitioners, in ten of the above cases, to show that the voters objected to had voted in the name and character of others who were on the register; and ten votes were accordingly struck off the poll by the Committee. In the course of the proceedings, the petitioners also succeeded in placing on the poll the vote of one Samuel Dawson, under the circumstances which will be presently stated. The consequence was, that a majority of one was established in favour of Mr. Penleaze.

Dawson's case.

Previously to entering upon the points which arose upon the cases of personation, it will be expedient to dispose of the case of Samuel Dawson, above referred to. The counsel for the petitioners sought to place this vote on the poll under the following circumstances.

Where the name of a party had been inserted in the list placed on the church door, but was omitted from the list laid before the barrister, and consequently was not on the register:—Held, that his vote having been tendered must be added to the poll.

The name of this individual had been originally inserted by the overseer in the list of voters, and posted on the church-door according to the provisions of the Reform Act;—no notice of objection to the voter was given to the overseer; but by the inadvertence of the latter in copying the list to be laid before the revising barrister, the name was omitted, and consequently did not appear upon the register.

These facts having been given in evidence, a witness,

who acted as poll-clerk at the hustings, was called to prove, that at the election Dawson tendered his vote in favour of Mr. Penleaze. This evidence was objected to on the part of the Sitting Member.

Mr. *Knapp*. Parol evidence of the tender cannot be received. By the Reform Act, votes tendered are to be entered by the returning officer in the poll-book. The poll-book is therefore the legal evidence of such tender, and as that is a written document, vivâ voce evidence cannot be admitted until the poll-book has been put in.

Parol evidence admitted to prove tender.

The Committee overruled the objection, and the poll-clerk was then called, who stated that Dawson tendered his vote for Mr. Penleaze, but that as his name was not found on the register, his vote was not entered on the poll.

Mr. *Austin* in support of the vote.—It is clear that the name of the voter has been omitted from the register by the negligence of the overseer. In such a case the Committee must assuredly have authority to place the vote, having been duly tendered, on the poll.

Argument in support of the vote.

There have been no laches on the part of the voter. The fault of the omission rests entirely with the overseer. The name was inserted in the list affixed by the overseer on the church-door, and the overseer was not authorized to substitute for that original list, a copy to be revised by the barrister; for by the 64th section of the Reform Act, the overseers are to make out lists of the voters, and are then to cause copies of the lists to be printed and affixed on the church-door, and by the 50th section, they are to produce the lists (not the copies) before the revising barrister. The voter in this case, therefore, if deprived of his vote, will suffer in consequence of the overseers departing from the directions of the statute. Nor was it in the power of the voter to remedy the omission. In the first place, it must be presumed, that having found his name duly inserted in the first list, he would be wholly unaware of its being omitted in the list laid before the barrister. But even supposing him to have become aware of the fact, still it would have been useless to apply

to the barrister to insert his name on the list; for the list with which alone the barrister has to deal, is the list laid before him by the overseer; and it is specially provided by the concluding part of the 50th section of the Reform Act, that the barrister shall not insert the name of any person in the list, unless the notice required by the act shall have been given. But of course the voter having seen his name inserted in the list on the church-door would not have given notice of a claim to be inserted on the list. He could not therefore have supported such a claim before the barrister. But in this case it does not even appear that the voter was aware that his name was omitted from the list. The result therefore will be, that the voter, not owing to any want of qualification, or to any laches on his part, but solely owing to the negligence of the overseer, will be deprived of his right, unless the Committee shall interpose to restore it to him. Assuredly the Committee must have power so to do; for under the old law committees had jurisdiction over the whole poll, and in a case like the present that jurisdiction must still remain; for though it has been held that committees have jurisdiction only over those votes upon which the barrister has adjudicated, the principle of that decision cannot apply to a case in which the barrister could not be called on to adjudicate. In this case the barrister had no jurisdiction, for the Reform Act gives jurisdiction to the barrister only where notice of objection to a voter, or notice of a claim to be inserted in the list, has been duly given to the overseer. But here no objection had been taken to the voter, and the voter having found his name on the overseer's list, could not have given a notice of claim in the time within which such notice must have been given. This is the case of an omission on the part of an officer acting under the statute. The Committee is the only authority by whom the omission can be rectified; and it would be therefore too much to say, that in such a case the Committee does not possess the power to interfere to place this vote upon the poll.

Merewether, Serjt. contrà.—The vote cannot be now received, for no proof has been given that Dawson was qualified to be on the list at all. At any rate, supposing the Committee to have the power of placing a vote on the poll under such circumstances, it is obvious that it ought to have been proved that the party was qualified to vote. That proof is wanting in the present case. But it can be shown that the Committee have no power to place this name on the poll. It has been decided by the Committee in the Bedford case, (which decision has received the sanction of two other committees,) that a committee has jurisdiction only over votes which have been improperly inserted or retained on the list, or improperly omitted from the same by the barrister. Parties improperly omitted by the barrister are, by the 59th section of the act, entitled to tender their votes; and committees, by the 60th section, are then to determine upon votes so tendered. But by the principle of the decision in the Bedford case, the Committee can only decide upon votes so tendered, which have been improperly omitted by the barrister. In this case the party had no right to tender his vote, because it was omitted, not by the revising barrister, but by the negligence of the overseer. The party must have his remedy against the overseer, but as the law stands the Committee cannot interfere to place his name upon the poll. It would be a great hardship upon candidates if such a course were adopted, for a candidate could never ascertain what was the real constituency; and a member having been returned by a majority of the registered votes, might be put to an enormous expense in defending his return, in consequence of votes being brought forward against him of whose existence he had till then no knowledge.

Argument against the vote.

The Committee resolved that Samuel Dawson had a right to vote at the election; that his name ought to have appeared on the list; and that consequently his vote

Vote held good.

must be received for the party for whom he intended to vote.*

Cases of personation.

The cases of personation, which the petitioners succeeded in establishing, resolved themselves in general into the mere question of fact relative to the non-identity of the parties who voted, with those whose names were on the register. It would, therefore, be superfluous to enter into the details of these cases, with the exception of the points of law which arose incidentally during the progress of them, and which will presently be stated. The following case, however, being somewhat peculiar in its circumstances, deserves to be noticed.

Chalk's vote. Where the name of A. had been inserted on the register instead of that of B. evidence was admitted to show that such was the fact; held also, that under such circumstances A. had no right to vote.

This was the case of *Thomas Chalk*. The name on the register stood thus—" Chalk, Thomas, scot and lot, Chandos Street." On the poll the name stood, " Chalk, Thomas, Chandos Street, painter and glazier." According to the statement of the counsel for the petitioners the facts of the case were, that the name of Thomas Chalk, which stood on the register, had been inserted by mistake for that of Thomas Clarke. The name of Thomas Clarke was in the overseer's list of rate-payers, from which the list of voters was made. That of Thomas Chalk was not in this list, and was inserted in the list of voters instead of that of Clarke by a mere mistake in copying the list. Thomas Clarke, the party whose name should have been inserted in the register, resided in Chandos Street; whereas Thomas Chalk, who voted, did not reside in Chandos Street, but in Bell Street, which is in a different parish.

Evidence of these facts being offered on the part of the petitioners,

Mr. *Rogers*, on behalf of the sitting member, objected to its being received. He contended that in this case explanatory evidence could not be given, and referred to the Leominster case,† as being precisely in point, and decisive of the question. In that case, William Roberts

* See note (B) post, p. 126. † 2 Peck. 305.

had been rejected by the returning officer, as being on the November rate. In the January rate the same premises were rated in the name of Thomas Roberts. It was proposed by the Counsel for the Petitioner, to call the Overseer to prove that the name of Thomas had been inserted by mistake, and that both rates had been in fact paid by William. This evidence was objected to, and the Committee decided that it was not admissible.

Mr. *Austin*, contrà.—The Leominster case is not in point. That case was one of a disputed right to vote, but the present is merely one of identification, and it has been decided by the Committee that evidence on that head may be received.*

The Committee decided that the evidence might be proceeded with; which having been done, they resolved that the Thomas Chalk who polled was not the Thomas Chalk of Chandos Street, described in the register, and that his vote must be struck off the poll. Vote bad.

During the investigation of the cases of personation before mentioned, several legal points incidentally arose, which will now be mentioned.

In the case of *William Butt*, and one or two others, in which the name of the party who voted was the same as that of the party registered, an attempt was made on the part of the sitting member to preclude the petitioners from going into evidence to disprove the identity of the parties. Butt's vote. Evidence of non-identity admitted.

Merewether, Serjt., for the sitting member, argued as follows. Evidence cannot be received to disqualify the voter. He is rightly designated in the register according to his proper name; and he has answered the questions, and taken the oath prescribed by the Reform Act, on the subject of identity. It must, therefore, be taken that he

* See infra, Butt's vote.

as the party whose name appears on the register. It has been fully established that the register cannot be impeached before a Committee, where no objection has been taken to the vote before the revising barrister: in this case no such objection has been taken, and the vote cannot therefore be impugned.

Mr. *Austin*, on the other side, denied that this was an attempt to impeach the register, the object of the evidence being only to disprove the identity of the party who voted, with the party on the register. The name of the latter would remain on the register, and his right to vote would be undisturbed, whatever might be the decision of the Committee on the subject of identity.

The Committee, without hesitation, determined that evidence might be given to prove that the party who voted was not the party whose name was on the register.

[illegible]

Considerable discussion arose during the consideration of William Butt's vote, as to the competency of a party to give evidence on behalf of the petitioners, who had himself subscribed towards defraying the expenses of the petition. The point was twice raised, first by Mr. *Kemp*, and afterwards by Mr. Serjeant *Merewether*. They argued as follows.

The witness is incompetent on the ground of interest. Having subscribed a sum of money towards prosecuting this petition, he will be entitled to receive back any surplus that may remain; and in the event of the opposition being declared frivolous and vexatious, a result towards which his evidence may contribute, he will be entitled to recover back the amount of his subscription, or whatever may remain of it. He has therefore clearly an interest in the result of the proceedings. Besides, the witness is an indirect petitioner, he pays part of the expenses of the [illegible]ition, and therefore virtually he is a petitioner. As [illegible]e is incompetent to be a witness. A witness cir-

cumstanced as this witness is, would be held to be incompetent to give testimony in a court of law.

The Committee, without calling on the counsel for the petitioners to answer the objection, resolved that the witness was not incapacitated from giving evidence by having subscribed towards the expenses of the petition. At the same time they held, that it was open to the counsel for the sitting member to question the witness as to the fact of his having so subscribed, as tending to show a bias on the mind of the witness, and in so far to affect his credit.

May be cross-examined as to the fact.

A question of considerable importance was several times discussed during the investigation of these votes, relative to the admissibility in evidence of declarations of voters themselves, adverse to their own right, made after having voted.

Declarations of voters admissible.

The question was first raised on the vote of *John Sanders*. The case set up in opposition to the vote was, that one Thomas Sanders had personated a man named John Sanders, whose name was on the register, and had voted in his stead. In support of this statement evidence was offered of a conversation, after the election, between the party who voted, and whose name was proved to have been Thomas Sanders, and a witness named Draper; in which, on the voter having stated to Draper that he had voted for Mr. Hoy, and Draper observing in return that he (Thomas Sanders) had no vote, the latter stated that it was true he had no vote, but that he had voted as John Sanders.

Sanders's case.

Mr. *Knapp*, in support of the vote, objected to the receipt of this evidence, but the Committee decided that the evidence was admissible.*

The point was again raised on the vote of *William Harding*, but on the Committee intimating that they had

Harding's case.

* See arguments, *post*, p. 114.

already decided that such declarations, even after voting, were receivable, the evidence was proceeded with.

Primmer's case. The question was, however, a third time agitated on the vote of *James Primmer*, and the point having been more elaborately discussed on this than on the former occasions, a statement of the arguments has been deferred till the present. The case in question differed, however, from the two foregoing in one respect, namely, that the declaration of the voter, which the petitioners sought to give in evidence, had been made since the ballot for the Committee had taken place.

Mr. Serjeant *Merewether* objected to the receipt of the evidence on the following grounds:—The rule of law is, that no evidence can be received except on oath. It is true an exception is made as regards the admissions of parties themselves, because it is presumed that no person would make an admission contrary to his own interest. But the principle of that rule does not apply to the case in question, for the voter having once given his vote, has no longer any interest in it; his interest has been transferred to the sitting member. He has, therefore, no longer such an inducement to speak the truth, arising from a sense of his own interest, as would make it safe to receive his declarations as to his own right, divested of the sanction of an oath. Besides, the utmost extent to which the exception in favour of admissions has been carried is, that the admissions of a party may be given in evidence against himself; here the admission of the voter, if received, would affect, not the party who makes the admission, but the sitting member. In the Middlesex case the Committee held, that declarations made by voters, after the election, could not be received in evidence;* and it must be presumed (as is observed by Mr. Rogers in his remarks on this subject) that the decision on the Middlesex case proceeded on the ground that the candidate had acquired an interest and a title

* 2 Peck, 141.

through the act of the voter, and that consequently, as against him, the declarations of the voter were inadmissible. And in the report of the Penryn case it is stated, that the principle upon which the Middlesex Committee had formed their decisions was stated by the counsel on the one side, and admitted on the other.* In the case of Nottingham,† evidence was offered of an admission on the part of a voter, after the election, that he was a pauper at the time of voting, but the evidence was rejected. At any rate the declaration of a voter made subsequently to the striking of the ballot must be inadmissible; for if such a declaration were allowed to be given in evidence, the effect would unquestionably be to convert the anti-room of the Committee into a canvassing room; and if such an admission were allowed to defeat the vote, the candidates might as well begin their canvass over again, for any voter might then, by a similar declaration, give a vote to the other side.

Mr. *Austin* contrà.—The evidence is admissible. The law will be found well laid down by Mr. Rogers, in his work on the Law and Practice of Election Committees, p. 218. He writes as follows:—"Notwithstanding some recent opinions to the contrary, it seems to be the better opinion, that what a voter says respecting his own right to vote, is an exception to the general rule, (respecting hearsay evidence,) it being considered as an admission by a party in the cause; for though not a party to the record, yet when his own vote is at issue, he is considered substantially interested; thus he is incompetent to give evidence in support of it; nor can he be compelled to give evidence against it; and it has been decided, that where a person may refuse to give evidence on the ground that he is a party to the suit, though not a party to the record, the opposite party are entitled to give his declarations in evidence." ‡

* C. & D. 63. † C. & D. 223.

‡ Rex v. Inhabitants of Hardwicke, 11 East, 587.

There are numerous cases which bear out the position as laid down by Mr. Rogers.

In the *Bedfordshire* case * the admissions of voters were uniformly allowed to be given in evidence upon the authority of previous decisions in the *Cricklade* case.

The same course was adopted in the case of *Weymouth*, and in those of *Peterfield*† and *Cirencester*;‡ and in the *Leominster* case § the Committee resolved, "that the declaration of a voter is admissible whether made before or after the election, unless that declaration goes to affect him with penal consequences."

In the case of *Ilchester*,‖ the rule was carried still further; for in that case the admission of a voter that he had received a bribe, (and that went to affect him with penal consequences) was held to be receivable in evidence. A reason is assigned by Mr. Rogers, why such admissions should be received in evidence, which is perfectly satisfactory: namely, that though a member when elected has to a certain degree acquired an interest in the votes of those who voted for him, yet the interest of the public is paramount to every individual interest: and he further observes, that "the Committee are not like jurymen, sworn 'to try the issue joined between the parties,' but 'to try the matter of the petition referred to them.'" They are "a Select Committee, to try and determine the *merits* of the return or election."¶ Principle, therefore, as well as the number of authorities, are in favour of the admissibility of this evidence, and the resolution of the Middlesex Committee ought not, therefore, to be allowed to prevail over the strong body of antecedent decisions.

As to the cases of *Penryn* and *Nottingham*, it is enough to observe, that in the former of these cases the question was not examined into but taken for granted; and that in the latter, the point was not argued before the Committee.

* 3 Doug. 11. ‡ Orme on Elect.
‖ 3 Doug. 339. ¶ 10 Geo. III. c. 16.

Merewether, Serjeant, in reply. The *Middlesex* case is subsequent to the authorities cited on the other side, and must be considered to have over-ruled them; and the authority of that case is fully established by the fact of the decision having been acquiesced in, in the case of *Penryn*, and acted on by the Committee in the *Nottingham* case. In answer to the argument of the other side, drawn from the interest of the public, it may be observed, that though the public certainly may have an interest in the matter, so also have the voter and the candidates, and their's is a more immediate interest. The right of the candidate therefore to exclude the declarations of the voter, must not be controlled by any supposed interest of the public.

The arguments having proceeded thus far, the Committee interposed, and intimated that as they had already on two former days decided that the admission of a voter after the election was receivable, it would be expedient that the learned counsel should confine himself to the point as to whether such an admission were receivable, having taken place after the ballot had been struck.

Merewether, Serjeant, in continuation. The decisions as to the admissibility of the evidence which the Committee have determined on receiving, are at all events conflicting, and it is certain that there is no case in which it has been decided that the admission of a voter, made after the Committee had been ballotted for, could be given in evidence.

The Committee will hardly therefore carry the rule further than the former decisions have gone; more especially when it is borne in mind, that those decisions have not been uniformly acted upon, and that great inconvenience would arise from admitting the evidence under circumstances like the present. But there is another ground upon which this evidence must be rejected; namely, the rule that where the declarations of a party may be given in evidence in general, they cease to be

admissible, if made *post litem motam*. The reason of that exclusion is two-fold; first, to prevent such declarations from being made expressly for the purposes of a suit; and secondly, because declarations made under such circumstances no longer carry with them the probability of truth, which is the ground of their being otherwise received in evidence. The principle of that exception is perfectly applicable to the present case.

Declarations of voter not admissible if made after ballot struck.

The Committee resolved, that the admission should not be received in evidence.

Voter may disprove his own vote.

The counsel for the petitioners now proposed to call the party himself who voted, to prove his own incapacity.

Mr. *Knapp* objected to the witness being called. The Committee have already decided that the declaration of this voter made to another person cannot be given in evidence. How then can he himself be called? To examine him to the same facts would be to evade the resolution of the Committee. It would be carrying the case further than it had been proposed to do, by offering to give evidence as to his admissions. Besides, such a proceeding would be wholly inconsistent with the principles of law. The parties before the Committee are Mr. Hoy and Mr. Penleaze. The voter has given his interest in his vote to Mr. Hoy under the obligation of an oath: he cannot, therefore, now be called to unswear what he has before sworn, in order to unseat Mr. Hoy. The effect of such a course would be to open a door to the grossest perjury. It cannot be allowed that after a voter has taken his oath at the poll, he should come before the Committee and swear that he had no right to vote. It would be in fact asking him, "Have you not committed gross perjury?" No authority can be pointed out for such a course; and it would be most unjust towards sitting members, for it would place them in the greatest possible difficulties, as it would be impossible for them to know what they had to meet.

Mr. *Austin* contrà.—If an opportunity had been afforded to the counsel for the petitioners to answer the argument derived from the rule respecting the inadmissibility of delarations made *post litem motam*, which was urged by the other side in reply, it is possible that the Committee might have come to a different conclusion, even on the subject of the declaration of the voter; for that rule is not applicable to a case like this; it applies only to cases of pedigree and custom, where the declarations of persons who had a competent knowledge, and no interest to deceive, are received on account of the difficulty which occurs in such cases of procuring more positive evidence. To guard against the fabrication of evidence in these cases, it is necessary to exclude declarations made after the commencement of the suit. But there is no analogy between the declarations of such persons and the admissions of parties. The latter are always receivable whensoever made, on the ground that a party would not state that which is against his own interest unless it were true. It has already been shown that the voter must be considered as a party where his own vote is concerned. But at all events, though the admission of the voter, having been made subsequently to the striking of the ballot, may not be receivable, still his evidence as to the circumstances under which he voted is perfectly admissible. It is true, as his own interest is concerned, he may refuse to answer; but it is competent to the counsel for the petitioners to ask him the question. With respect to the argument drawn from the voter's having been sworn at the poll, it may in the first place be observed, that there is no evidence that such was the case, and, indeed, it will turn out that the fact was not so. But at all events that would not affect his competency. The question is not whether the interests of the voter or the candidate are to be consulted, but whether the interests of the public are not to be deemed paramount to every other. In the case of Ilchester,* a voter was permitted

* 2 Peck. 251.

to be a witness for the purpose of proving that he himself had no right to vote, being first admonished that he was not bound to answer any question that had that tendency. The same course may be adopted on this occasion.

In reply it was observed, that in the Ilchester case no objection was made to the competency of the witness on the part of the candidate for whom he voted.

The Committee determined that the voter might be called as a witness.*

The counsel for the petitioners having established a majority over the sitting member, now called on the counsel for the sitting member to proceed. The latter accordingly now proceeded to question the votes of Mr. Penleaze to which they had objected.

Crouch's Vote.

The first vote objected to was that of one *Crouch*, who was described on the poll as "James Thomas Crouch, Lower East Street, brewer;" whereas the only person on the register of the name of Crouch was described as "William James Crouch, Lower East Street."

When the description on the register and poll differed only in the Christian name, held that evidence might be given to disprove identity.

Mr. *Rogers*, in opposition to the vote, objected, that in the first place there was no such person on the register as "James Thomas Crouch," and contended that this constituted such *primâ facie* proof that James Thomas Crouch was not registered, as threw on the opposite side the burden of proving that the party who voted was the party registered in the name of "William James Crouch."

Mr. *Follett*, on the other side, contended that the petitioners were not bound to give such proof, inasmuch as this was not a case of personation at all, but the case of a person whose name was on the register by a wrong Christian name. Such being the case the objection could not be now gone into, for it ought to have been taken before the revising barrister; the objection not having been taken before the barrister, it was not open to

* See note (C.), post, p. 126.

the other side to question the vote before a Committee of the House.

Mr. *Rogers*, in reply, stated, that there were two grounds of objection to the vote; first, that the voter was not registered; secondly, that the voter had personated another party, who had been registered by mistake, having been dead two years.

The Committee then intimated that what they wished to determine was, whether the person who voted was the person intended to be placed on the register; that they had already gone into cases where mistakes had been made, which they had rectified; and that in this case what they wanted to ascertain was, whether the Crouch who voted was the Crouch whose name was on the register.

On the part of the sitting member it was contended, that it was incumbent on the petitioners to reconcile the discrepancy by giving proof of the identity. The counsel for the petitioners stated that they had no objection to give evidence* on this head. They then produced evidence to show that the voter's father, whose name was William James, had been dead four years; that he had been a brewer in East Street; and that the son had carried on the business after the death of the father, and that the latter had been sworn at the poll. It further appeared that the son had paid rates for the premises after the father's death, but also that the name in the assessment had not been altered. In opposition to the vote evidence was adduced, from which it appeared that

* A witness of the name of Young was first called, but it was objected to him that he had been present in the room during the previous proceedings. On the other hand, it was urged that as a new class of votes was now entered on, and the witness was to depose to new matter quite distinct from the cases before disposed of, the rule might be relaxed. But the Committee held, that the rule was strict in its application, and refused to admit the witness.

the voter had ceased to be in possession of the premises for a year and a half, and some conflicting evidence was adduced as to the fact of the voter having had any interest in the brewery after his father's death.

Vote held good.

The Committee, after considerable deliberation, determined that "the individual who voted as James Crouch was the individual whose name was on the register, and that accordingly the vote was good."

Draper's vote. Change of qualification after 31st July.

The vote of *Bourn Hall Draper* was the next objected to on behalf of the sitting member. The ground of objection to the vote was, that the voter being inserted on the register as a £10 householder, had quitted his house subsequently to the 31st July, and therefore was not possessed of the qualification in respect of which he was registered. The voter was described on the register as "Bourn Hall Draper, house Castle Lane;" and on the poll as "Bourn Hall Draper, Bar-gate, dissenting minister."

It appeared in evidence that the voter had occupied a house in Castle Lane up to Michaelmas; that he was on the rates of the January and May preceding, but that on the July rate the word "void" was written opposite to his name. Between the 18th and 26th July he left the house in Castle Lane, and went to lodge with his son at the Bar-gate, in a different part of the town: the house was then shut up, but he continued to pay rent for it till the Michaelmas ensuing.

Mr. *Follett* in support of the vote.—According to the evidence, if this vote was bad at the time of polling, it was equally bad at the time of registration, for the voter had quitted the house in Castle Lane before the period of registration; the objection might, therefore, have been taken before the revising barrister, and the vote consequently cannot be now objected to.

Mr. *Rogers* in reply.—The objection could not have

been taken before the revising barrister, for by the Reform Act, notices of objection are required to be given before an objection can be insisted on before the barrister. In this case, the voter having remained in occupation till the end of September, notice of objection could not have been given in time. The third question which by the Reform Act the returning officer is directed to put to the voter is conclusive on this point. That question is as follows:—"Have you the same qualification for which your name was originally inserted on the register of voters?" and in order to mark it more specifically it went further, the following words being in italics—"*as the case may be, specifying in each case the particulars of the qualification as described in the register.*" Now in this case, the voter having been registered in respect of a house in Castle Lane, and having ceased to occupy that house, is no longer in possession of the qualification in respect of which his name was inserted on the register.

The Committee decided that the vote was a good one.

Sherry's vote. Change of qualification.

James Sherry's vote was objected to on the same ground as the preceding, namely, that of a change in the qualification in respect of which he had been registered. The qualification as described on the register was "a house above Bar-street." On the poll, the name stood "James Sherry, house Markham Place, above Bar." The facts of this case were not altogether free from doubt. In the first place, it appeared, though it was stated that "above Bar" and "Markham Place" were separate streets, that the inhabitants of the latter were rated under the head "above Bar." By the witnesses of the sitting member it was stated that Sherry had quitted the premises, a public-house, which he had occupied in above Bar-street, in the first week in November, to make way for another tenant; but the evidence was not altogether conclusive, and it appeared that Sherry's name had remained over the door till after the election.

election petition being interlined in a different hand from that in which the rest of the petition was written; Ordered, that the said petition be withdrawn." It does not appear, however, whether this was done out of caution by the petitioners, or that an objection to the petition was taken in the House.

The Portarlington Committee of this session (*vide post*) have adopted the decision of this Committee, by holding that alterations in a petition do not vitiate the remainder of the petition.

(B.) This decision has been much questioned, and can hardly be sustained. It is certainly not reconcileable with the view taken by this Committee, as well as by the preceding ones, of the conclusiveness of the register as to votes not decided on by the barrister. It is quite clear that the intention of the Reform Act is, that registration should, in all cases, be a condition precedent to the exercise of the franchise. The only instance in which this necessity is dispensed with, is where a party is omitted from the register in consequence of the decision of the barrister. In such case, the Act authorizes him to tender his vote, in order that a Committee may decide upon the right. But there is nothing in the Act which authorizes the tender of a vote in cases where the omission from the register is the result, not of the barrister's decision, but of the misconduct of the overseer. It should seem therefore, in such a case, that, as the Act is at present constituted, the positive enactments of the statute which imposes the necessity of registration, ought, in point of law, to prevail. Whether a Committee ought not to have jurisdiction to interfere, under such circumstances, is another thing.

(C.) There are several legal decisions which support the view of this subject taken by the Committee. In the case of *Rands* v. *Thomas*,* Lord Ellenborough says, "I can, indeed, well understand that the witness might have taken the objection; that his being compelled to answer the questions might involve him in the penalty of perjury: this would have been an objection not affecting his competency. It was decided in *Rex* v. *Teal*, that a woman who had deposed on oath, at the instigation of the defendant, to the prosecutor's being the father of her bastard child, was competent to prove that in truth the defendant was the father, and consequently to prove herself forsworn." In *Bush* v. *Rawlins*,† which was an action of debt upon 2 Geo. II. c. 24, a man who had taken the bribery oath, was held to be competent to prove that he had been bribed.

(D.) A petition was afterwards about to be presented to the House against Mr. Penleaze, on the ground of bribery and treating; but it was subsequently withdrawn upon an intimation from the Speaker, that, as in the former petition the seat had been claimed for Mr. Penleaze, any objection to his right to the return should have been made before the Committee which sat on that petition; and that such opportunity having been waived, and Mr. Penleaze declared duly elected, it nwould be now too late to prefer a charge of bribery against him.

* 5 *Mauls* and *Selwin*, 244.

† Cited by Lord Mansfield in *Clerke* v. *Allen* and *Johnson*, Cowper, 197.

CASE V.

BOROUGH OF CARNARVON.

THE Committee was chosen on Tuesday, March 5th, and consisted of the following members.

Sir Matthew White Ridley (Chairman,) *Newcastle.*

Sir George Staunton, Bart. *Hants, South.*	Lord Viscount Cole, *Fermanagh.*
J. Oliphant, Esq. *Perth.*	John Fenton, Esq. *Rochdale.*
Robert Palmer, Esq. *Berks.*	C. Russell, Esq. *Reading.*
John Brockhurst, Esq. *Macclesfield.*	Edwin Ruthven, Esq. *Dublin, City.*
William R. Cartwright, Esq. *Northamptonshire, South.*	Sir Robert Frankland, Bart. *Thirsk.*

Petitioner—Major Owen Jones Ellis Nanney.
Sitting Member—Sir Charles Paget.
Counsel for the Petitioner—Mr. D. Pollock, Mr. Follett, and Mr. Plunkett.
Agents—Messrs. Dyson and Hall.
For the Sitting Member—Mr. Harrison, Mr. Serjeant Merewether, and Mr. W. Russell.
Agents—Messrs. Lowe.

The Petition stated, that at the last election for the borough of Carnarvon, in which Pwllheli, Nevin, Conway, Bangor, and Criccieth share, under the provisions of the Act of the 2d year of the reign of his present majesty, intituled "An Act to amend the Representation of the People in England and Wales," Sir Charles Pa-

Where a petition complained of the election as well as the return; held, that evidence might be given to show that the return was a false return.

Held also, where the returning officer had counted up tendered votes with the votes admitted on the poll, and by means of which the sitting member had obtained a majority, that the return was fraudulent, and ought to be amended in favour of the other candidate.

get and the Petitioner were candidates;—that the bailiffs of Carnarvon are the returning officers;—that the bailiffs of Carnarvon are invested by the said recited Act of Parliament with the power of appointing deputies to take the votes of the electors at each of the places before mentioned;—that the said bailiffs appointed one William Jones to be their deputy at Pwllheli;—that the petitioner had a majority of legal votes, and ought to have been returned, inasmuch as many voters were improperly admitted upon the register, which were given for the said Sir Charles Paget, and thereby occasioned him to have a colourable majority over the petitioner;—that the said bailiffs in taking the poll at Carnarvon, and the said William Jones in taking the poll at Pwllheli, not only rejected the votes of many persons entitled to vote, and who tendered their votes in favour of the petitioner, but admitted many tenders to vote for Sir Charles Paget who were not entitled to vote at the said election, thereby increasing the colourable majority which Sir Charles Paget appeared to have over the petitioner at the close of the poll;—and that in taking the poll at Pwllheli, the votes tendered for Sir Charles Paget, though not admitted as votes, were entered in the same columns with the votes received for Sir Charles Paget and the petitioner, with certain words annexed, although the petitioner, by his agents, insisted that the same should be entered on a separate column, so as to distinguish the votes received at the said poll from such as were tendered only, and not admitted; that in reckoning up the votes given in favour of each candidate at the said election, votes tendered only, and not admitted, ought to have been omitted; whereas the said bailiffs illegally, and notwithstanding the protest of the petitioner, by his agents, included such tendered votes in ascertaining the total number of votes polled at such election, whereby the colourable majority of Sir Charles Paget was greatly increased, and in consequence the said bailiffs returned the said Sir Charles Paget as duly elected; whereas the petitioner had

the majority of legal votes, and was, in fact, duly elected, and ought to have been returned.

The Petition concluded by praying that the House would declare "that the election and return of the said Sir Charles Paget was void, and that the petitioner ought to have been declared duly elected; and that the return might be amended accordingly, and that the petitioner might have such further relief as to the House should seem meet." Prayer.

The numbers on the poll were, Poll.

For Sir Charles Paget	410
For Major Nanney	363

The case was opened by the counsel for the petitioners, as one which might ultimately involve a scrutiny of votes; but they claimed, in the first instance, that, without going into a scrutiny, the return should be amended, and the petitioner, Major Nanney, declare dentitled to the return. Case of Petitioners.

The facts upon which they founded this claim were as follows. Under the Reform Act, the borough of Carnarvon, as far as the returning of members to Parliament is concerned, consists of Carnarvon, as the superior borough, and the contributory boroughs of Pwllheli, Conway, Nevin, Bangor, and Criccieth. At each of these places a separate poll is taken. The bailiffs of Carnarvon are the returning officers, and they are empowered by the Reform Act to appoint deputies to take the poll at each of the contributory places. At the last election they appointed one William Jones to be their deputy at Pwllheli.

At the registration for the borough, 78 votes belonging to Pwllheli were rejected by the revising barrister. Of these votes, 67 were tendered at the election for Sir Charles Paget. The deputy at Pwllheli, instead of entering these votes on the poll-book as tendered votes merely, entered them on the same column and consecutively with the votes which were on the register and received, so as to give them the appearance of established

votes. At the same time, he wrote opposite to such votes the words "*de bene esse*," but made no further distinction between the tendered and accepted votes; and, on casting up the numbers, included the tendered votes in the reckoning. Both this mode of entering these votes, and the including them in counting up the numbers, were strenuously objected to by the agents of the petitioner.

The Pwllheli poll having been delivered by the deputy to the bailiffs of Carnarvon, the latter, on finally computing the numbers, in order to declare the return, notwithstanding the objection and remonstrance of the petitioner's agents, persisted in counting these tendered votes with the votes received at the election. Eleven votes tendered for Major Nanney were similarly dealt with, contrary to the express desire of his agents. The effect of this proceeding was to give Sir Charles Paget a majority on the poll, and he was accordingly returned.

The counsel for the petitioner having stated the above facts, as entitling the petitioner to the return,

Evidence as to false return objected to.

Mr. Harrison, for the sitting member, objected to evidence being gone into, in order to call on the Committee to determine that the return ought to be amended, without the sitting member being permitted to go into any matter he thought fit in defence of his seat.

The question before the Committee cannot be narrowed to the mere question of a false return. How far the facts would have warranted the petitioner in complaining of this as a false return, is another thing; but he has not so complained, and therefore is not entitled to treat it as such before the Committee. A petition against a false return is wholly different from one which brings into question the general merits of the election. This petition is of the latter kind. The prayer is in the usual form of a petition, complaining of an undue election and return; and puts, therefore, the whole of the merits in issue. It is true the petition contains an objection to the return, but that is to be found in every petition: it is

mixed up with the merits, and is not directed against the return exclusively. The House has treated it accordingly. By a resolution* of the House, petitions are to be classed and read in the following order; viz. such as complain that no return has been made, in the first class; such as complain of double returns, in the second; such as complain of the election or return of members returned to serve for two or more places, in the third; such as complain of returns only, in the fourth; and the residue of petitions in the fifth class. Now on reference to the proceedings of the House when this petition was delivered in, the following extract will be found: "Then the said petitions (six others were presented at the same time) were delivered in at the table accordingly,† and being all of them petitions *of the last class*, were put into the glass at the table, and drawn in the following order." Six other petitions are then enumerated, and Carnarvon comes the seventh and last. Had it been a petition against the return, it would have stood first instead of last. On no account, therefore, can this be treated as a petition against the return, so as to preclude either party from going into the merits of the case. At the same time it will be admitted on the part of the sitting member, that these votes ought not to have been put upon the poll: they should have been entered not as votes, but as claims only. It is proposed, therefore, on the part of the sitting member, to treat them as tendered votes only. If these votes were to be considered as votes actually on the poll, the onus of taking them off would fall on the petitioner; whereas the sitting member proposes to take on himself the onus of putting them on the poll. He is entitled to deal with them as though they had been properly entered as tendered votes by the returning officers. The sitting member cannot be pre

* 7th Feb. 1833.

† This refers to the resolution respecting the classification of petitions, which, being a usual sessional order, happened to have passed on the same day that these petitions were delivered in.

cluded from going into the merits. This is a petition upon the merits; the House has treated it as such, and has committed to this Committee the consideration of all the merits. The petitioner has no right, therefore, to go into evidence, which is offered avowedly for the purpose of raising the question before the Committee, whether this is to be dealt with as a false return.

Mr. *Follett*, for the petitioner.—The objection is premature. It is offered by the other side to admit certain facts: that being so, those facts may certainly be proved. It will afterwards be for the Committee to determine what will be the effect of these facts.

Evidence admitted.

The Committee decided that the counsel for the petitioner should prove their case as they thought fit.

The facts above stated were then proved in evidence. Upon these facts;—

Argument for petitioner.

Pollock and *Follett* for the petitioners, contended that Major Nanney was entitled to the return, and that the return must be amended accordingly.

The return is clearly fraudulent. Major Nanney was entitled to be returned, and if an investigation is to take place as to the merits of this election, he ought to appear as the sitting member, not as the petitioner. This is no question respecting qualification or any right to vote. It is the case of a fraud on the return. That being so, the return must be placed on the same footing on which it would have stood if such fraud had not been practised. The return must be given to Major Nanney, and it will still be open to Sir Charles Paget to petition. The facts of this case are quite clear. Of the votes actually received at the election, Major Nanney had a majority; a number of votes tendered in favour of Sir Charles Paget, and which, having been rejected by the revising barrister, and not being on the register, ought only to have been entered as claims, were added to the poll by the returning officer,

and by these means a majority was obtained for the sitting member.

Now it is quite clear that under the provisions of the Reform Act, every elector, whether his right be derived under the old or new franchise, must be registered in order to vote. By every section by which either a former right is reserved, or a new right conferred, the registration of the voter is made the indispensable condition of the exercise of the right.

Then as regards voters who have been rejected by the barrister. By the 59th section of the act, provision is made for the case of voters, who have been omitted from the register in consequence of the decision of the barrister. They are authorised to tender their votes, in order that their right to vote may afterwards be submitted to the decision of a Committee of the House of Commons. The Act then provides that "the returning officer or his deputy shall enter upon the poll book every vote so tendered, distinguishing the same from the votes admitted and allowed at such election." Upon this it is perfectly clear that no votes were to be admitted and allowed, except those entered on the register. A vote not on the register can only be entered as a tendered vote, and the claim must be established by the decision of a Committee, before the vote can be added to the poll. In this case, either by the fraud or mistake of the returning officer, (and it is immaterial which,) votes so circumstanced have been reckoned as actual votes, and Major Nanney has been thereby deprived of his return. He is entitled therefore to claim that the return shall be given to him.

But it is contended on the other side that the petitioner cannot claim to treat this as a fraudulent return on account of the form of the petition. There is nothing in this objection. The language of the petition is clear and conclusive; it states all the facts; it states that voters had been rejected by the returning officer; that certain persons were appointed deputies by the returning offi-

[illegible] the names of persons tendering their votes were [illegible] the poll; that in reckoning up the votes given [illegible] of each candidate at the said election, votes [illegible] and not admitted, ought to have been [illegible] the said bailiffs illegally, and notwithstanding the protest of the petitioner and his agents, in[illegible] unstamped votes in ascertaining the total [illegible] polled at such election, whereby the [illegible] of Sir Charles Paget was greatly [illegible] in consequence the said bailiffs returned [illegible] Paget as duly elected, whereas the [illegible] of legal votes, and was in fact [illegible] ought to have been returned.

[illegible] pray the House will determine the return of Sir Charles Paget [illegible] duly elected and ought to [illegible] be amended accordingly; [illegible] such further relief as the [illegible] therefore, that language from the language of this petition. [illegible] from the proceedings of the [illegible] There are very old resolutions [illegible] According [illegible] returns [illegible] and the residue [illegible] petitions may be pre[illegible] and which may [illegible] petition, the House [illegible] The House has [illegible] the petition in the [illegible] the petitioner [illegible] the other side. [illegible] that this [illegible] (In referring to the petition [illegible] complaint of the return [illegible] improperly [illegible] the petitioners.

The Middlesex case is an authority in point.* In that case there was a charge that the returning officers had by their improper conduct procured the return of Mr. Mainwaring instead of Sir Francis Burdett; and there were also complaints which went to the general merits of the election. There was considerable discussion before the Committee as to whether they should in the first instance take into consideration the improper conduct of the returning officers in respect of the return of Mr. Mainwaring, or should go into the general merits of the petition. The Committee determined that they would first take that part which referred to the improper return. They afterwards decided that Mr. Mainwaring was not duly returned, and that Sir Francis Burdett ought to have been returned, and the House amended the return accordingly; leave being at the same time given to petition against the return within fourteen days. And that is the course which should be adopted on the present occasion.†

Now in this case the petition complains that in consequence of the illegal conduct of the returning officers in adding the tendered votes to the poll, an improper return has been made; the facts have been proved beyond all dispute; and the illegality of the proceeding cannot be contested. The Committee will therefore place the petitioner in the position in which he would have stood, had it not been for the illegal conduct of the returning officer.

Mr. Serjt. *Merewether* for the sitting member:—

Argument for the sitting member.

The Middlesex and Bedfordshire cases are not in point. Those were petitions against the return, not against the election. This is clearly a petition which relates to the merits of the election as well as to the return. The petitioner has so framed his complaint, and the

* 2 Peck. 357.

† See also the case of Bedfordshire, 1 Lud. 323, which was referred to in the Middlesex case, and much relied on.

House as so treated it. The sitting member has, therefore, a right to go into the merits without being compelled to prefer a fresh petition. No advantage could result from the latter course; for the merits must, after all, be investigated, and it would be better and fairer towards all parties that that should be done in the present instance. It is admitted that these votes must be considered as tendered votes only: and that the onus of making them as the poll lies on the sitting member. But we claim to be allowed to prove the right of these voters at the present occasion. It has been shown that the authorities cited on the other side do not make out their proposition. The truth is, they do not apply. This is a question arising under the new law, and must be decided by the provisions of the Reform Act. Now by the 59th section of that act, parties omitted from the register, in consequence of a decision of the barrister, are empowered to tender their votes. By the 60th section it is enacted, that "upon petition to the House of Commons complaining of an undue election or return of any member to serve in Parliament, any petitioner, or any person, defending such return, may impeach the correctness of the register of votes in force at the time of such election, by proving that, in consequence of the decision of the barrister who shall have revised the list of voters from which such register shall have been formed, the name of any person was improperly inserted or retained on such register, or the name of any person who tendered his vote at such election was improperly omitted from such register." Now these requisites exist in the present case. Here is a petition to the House, complaining both of the election and return. The sitting member is here defending the return. He is therefore entitled under this Act, whatever may have been the law heretofore, to prove that these persons were entitled to be placed on the register. This is not a question upon the poll, and, as regards the present inquiry, it is immaterial what may be the state of the poll; under the provisions of the Reform Act either of the parties

before the Committee is entitled to show that votes which were tendered at the election ought to have been inserted on the register. That is what the sitting member now claims to do.

There is another reason why this right should not be denied to him. As this Committee is the proper tribunal before whom the correctness of the register should be impeached, if the return should now be amended, and the sitting member should hereafter petition on the merits, it may be successfully objected to him that he ought to have availed himself of this opportunity, and that having failed to do so, he can no longer resort to another tribunal. No satisfactory answer could be given to such an objection.

Upon the whole, therefore, considering that this is a petition as to the merits, and that by the Reform Act a party defending his return is allowed to impeach the correctness of the register, the sitting member must be admitted to prove that these tendered votes were entitled to be inserted on the register.

The Committee came to the following resolutions:*

Resolutions.

That Sir Charles Paget was not duly returned a burgess to serve in Parliament for the borough of Carnarvon;

That Owen Jones Ellis Nanney ought to have been returned a burgess for the said borough;

That neither the petition, nor the opposition to it, were frivolous or vexatious;

That the Chairman be instructed to move the House that leave be given to Sir Charles Paget to question the election of Owen Jones Ellis Nanney, Esq. within fourteen days, if he think fit.†

The counsel for the petitioner then applied to the Committee to make a special report against the return-

* They did not call on the counsel for the petitioner to reply.

† Leave was given accordingly, and a petition afterwards presented. *Vide post.*

ing officers; but the Committee intimated that they had already considered that subject, and did not think there was a sufficient ground on the evidence to come to such a resolution.*

* It appeared in evidence that a somewhat similar practice had prevailed at a former election at Carnarvon; and it was observed that the Reform Act contained no specific directions as to the mode to be adopted by a returning officer in entering tendered votes. These circumstances may have weighed with the Committee; but there can be no doubt as to the illegality of the proceeding, and a returning officer would incur a serious responsibility, who, after this decision of the Committee, should adopt a similar line of conduct.

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CASE VI.

CITY OF OXFORD.

THE Committee was chosen on the 26th February, 1833, and consisted of the following members;

Sir Thomas Freemantle, (Chairman,) *Buckingham.*

Benjamin Handley, Esq. *Boston.*	Josiah Guest, Esq. *Merthyr Tydvil.*
N. R. Clayton, Esq. *Marlow.*	W. Pinny, Esq. *Lyme Regis.*
Lord Visc. Villiers, *Honiton.*	General Sharpe, *Dumfries.*
Hon. C. A. Pelham, *Lincoln, Co. Parts of Lindsey.*	Richard Walker, Esq. *Bury, (Lancashire).*
John Hope Johnstone, Esq. *Dumfriesshire.*	William Verner, Esq. *Armagh, Co.*

Petitioner—William Hughes Hughes, Esq.
Sitting Member petitioned against—Thomas Stonor, Esq.
Counsel for the Petitioner—Mr. Harrison, Hon. C. E. Law, and Mr. Walsh.
Agent—Mr. Shebbeare.
Counsel for Mr. Stonor—Mr. Serjeant Merewether, Mr. Follett, and Mr. Saunders.
Agent—Mr. Rose.

Petition.*

THE Petition stated, that at the last election for the city of Oxford, James Houghton Langston, Esq. Thomas Stonor, Esq. Sir Charles Wetherell, Knight, and the Petitioner, were candidates;—that many persons not qualified as freemen, or in respect of property, or occupation, or residence, procured themselves to be inserted on the lists of voters, and that many other persons not qualified

Persons improperly inserted on the register.

* 7th Feb. Appendix to Votes, p. 5.

cluded from going into the merits. This is a petition upon the merits; the House has treated it as such, and has committed to this Committee the consideration of all the merits. The petitioner has no right, therefore, to go into evidence, which is offered avowedly for the purpose of raising the question before the Committee, whether this is to be dealt with as a false return.

Mr. *Follett*, for the petitioner.—The objection is premature. It is offered by the other side to admit certain facts: that being so, those facts may certainly be proved. It will afterwards be for the Committee to determine what will be the effect of these facts.

Evidence admitted.

The Committee decided that the counsel for the petitioner should prove their case as they thought fit.

The facts above stated were then proved in evidence. Upon these facts;—

Argument for petitioner.

Pollock and *Follett* for the petitioners, contended that Major Nanney was entitled to the return, and that the return must be amended accordingly.

The return is clearly fraudulent. Major Nanney was entitled to be returned, and if an investigation is to take place as to the merits of this election, he ought to appear as the sitting member, not as the petitioner. This is no question respecting qualification or any right to vote. It is the case of a fraud on the return. That being so, the return must be placed on the same footing on which it would have stood if such fraud had not been practised. The return must be given to Major Nanney, and it will still be open to Sir Charles Paget to petition. The facts of this case are quite clear. Of the votes actually received at the election, Major Nanney had a majority; a number of votes tendered in favour of Sir Charles Paget, and which, having been rejected by the revising barrister, and not being on the register, ought only to have been entered as claims, were added to the poll by the returning officer,

and by these means a majority was obtained for the sitting member.

Now it is quite clear that under the provisions of the Reform Act, every elector, whether his right be derived under the old or new franchise, must be registered in order to vote. By every section by which either a former right is reserved, or a new right conferred, the registration of the voter is made the indispensable condition of the exercise of the right.

Then as regards voters who have been rejected by the barrister. By the 59th section of the act, provision is made for the case of voters, who have been omitted from the register in consequence of the decision of the barrister. They are authorised to tender their votes, in order that their right to vote may afterwards be submitted to the decision of a Committee of the House of Commons. The Act then provides that "the returning officer or his deputy shall enter upon the poll book every vote so tendered, distinguishing the same from the votes admitted and allowed at such election." Upon this it is perfectly clear that no votes were to be admitted and allowed, except those entered on the register. A vote not on the register can only be entered as a tendered vote, and the claim must be established by the decision of a Committee, before the vote can be added to the poll. In this case, either by the fraud or mistake of the returning officer, (and it is immaterial which,) votes so circumstanced have been reckoned as actual votes, and Major Nanney has been thereby deprived of his return. He is entitled therefore to claim that the return shall be given to him.

But it is contended on the other side that the petitioner cannot claim to treat this as a fraudulent return on account of the form of the petition. There is nothing in this objection. The language of the petition is clear and conclusive; it states all the facts; it states that voters had been rejected by the returning officer; that certain persons were appointed deputies by the returning offi-

understanding, that the out-voters were to receive 1*l.* and a 10*s.* ticket for a split vote, and 2*l.* and two tickets for a plumper. It was also proved by one Kirry, an out-voter, that he went to Mr. Stonor's committee room, and seeing Mr. Stonor there, told him that he was an out-voter, and that he wished to know who was to pay his expenses. Mr. Stonor referred him to the committee-room table, where he was told "to go and vote, and they would see it was all right." He accordingly did vote for Mr. Stonor, and then went back to the committee room to be paid, but Turner not being there, he received a 10*s.* ticket from the committee, and was desired to call again the next day to receive his expenses from Turner. He accordingly did call the next day, when he received 2*l.* from Turner.

It was also proved that for some time previous to, and during the election, public houses were opened for the entertainment of the voters in Mr. Stonor's interest. In many instances the houses had been opened by the order of Turner, but in several the publicans had furnished refreshments to the voters of their own accord, taking their chance of payment. All the bills were however paid by Turner, without distinction. At the election, 300 copies of a hand-bill, headed "List of Public-houses at which the friends of Mr. Stonor are requested to meet previously to proceeding to the Poll," and containing a list of 113 public houses, were printed and circulated. The printing of these hand-bills, as well as of the refreshment tickets, was ordered and paid for by Turner. As soon as the election was over, a notice was posted on the door of the house in which Mr. Stonor's committee had been held, dated "Committee-room, Dec. 14, 1832," calling on "all persons having claims on Mr. Stonor's committee, to deliver the same at Mr. Turner's, No. 3, Beaumont Street, by Tuesday next."

It was proved that 4,800*l.* had been paid by the sitting member to Turner in different sums, between the 14th September, 1832, and the 26th February, 1833, by cheques drawn on the bankers of Mr. Stonor.

Upon these facts the counsel for the petitioner contended that a case of bribery and treating had been established against the sitting member; but they more particularly insisted on that part of the case which related to the treating, and expressed themselves willing that the Committee should declare the election void on the ground of treating alone. That part of their argument which related to the law, as applicable to the facts of this case, was as follows:—

Argument for the petitioner.

The payment of expenses to out-voters is clearly illegal, and is of itself sufficient to avoid the election. It was held to do so in the case of Berwick,* and it formed a main ingredient in the cases of Ipswich† and Durham,‡ in both of which the election was set aside. In the latter, more especially, it was admitted that the payments were not unreasonable, and the argument was confined to the question whether the *bonâ fide* payment of expenses to an out-voter was legal or not. In the Grantham case, in 1820, the House of Commons resolved "that the practice of paying money to out-voters at the election of members of this House, under colour of indemnifying them for loss of time, is highly illegal, subversive of the freedom of election, and tending to the most dangerous corruption."§ At all events there cannot be a question as to the illegality of such payments, if colourable only, and used as a means of corrupting the voter. There can therefore be no question as to the illegality of those payments under the present system; for the extreme distance from the place of polling within which a voter must reside being limited by the Reform Act to seven miles, there can be now no pretence whatever for any allowance for expenses or loss of time.

Then as regards the giving of refreshment tickets:—In the Herefordshire case|| tickets had been given to the voters. There, as in the present case, the tickets had been turned into money; and there also a distinction had been made between those who gave single, and those who gave split

* 1 Peck. 401. † 1 Lud. 21. ‡ 2 Peck. 178.
§ 75 Journ. p. 435. || 1 Peck. 184.

votes. The same facts occurred in the Berwick case.* In both these cases the election was set aside. In the Middlesex case† refreshments had been provided by the agents of Mr. Mainwaring; but the entertainment was not charged to have been extravagant, or to have been even for the purpose of influencing votes, but only for the necessary refreshment of such as came to the poll; yet the Committee decided that Mr. Mainwaring had committed acts of treating, whereby he was incapacitated to serve in Parliament upon that election. It may be contended that in this case no agreement was made with the voters previously to their polling; but though such an agreement has not in general been specifically proved, still the fact of the payment, and the distinction in the amount before adverted to, together with the general understanding as to the practice, must necessarily lead to such a conclusion; at all events, in one instance the sitting member has been shown to have been a party to an agreement with a voter relative to the payment of his expenses.

Apart, however, from the payment of expenses, or giving refreshment tickets, a clear case of treating after the teste of the writ, has been made out against the sitting member. It is true that, with the exception just adverted to, the acts which have been proved have not been brought home to the sitting member personally; but the agency of Turner has been proved; acts of bribery and treating, therefore, done by him, will suffice to avoid the election. In the case of Felton *v.* Easthope,‡ Lord Tenterden held, that though bribery committed by an agent must be committed with the knowledge and authority of the principal, in order to involve the latter in penal consequences, still bribery by an agent would be sufficient to avoid the election, whether done with, or without, the knowledge of the principal. In this case, however, no doubt can exist as to the knowledge of the sitting member. The payment of 4800*l.* to Turner can leave no doubt of the participation of the sitting member in the corrupt acts of his agent.

* *Ante*, p. 143. † 2 Peck. 31. ‡ Rogers, Elect. 220.

Mr. Serjeant *Merewether*, for the sitting member.— It has never been expressly decided that the payment of expenses to out-voters will vacate an election. The cases cited are not conclusive on the subject. It is true the point was raised in those cases, and argued by counsel, but there were other facts mixed up with the one in question, which were of themselves sufficient to avoid the election, so that those cases cannot be said to afford an authority on the present question. In the case of Ipswich* the sums were excessive, and direct bribery was also proved. In that of Durham† there were charges of bribery and of treating resident voters. In the Berwick case‡ there was a treating of resident voters, and the sums allowed to out-voters were so large as necessarily to raise a presumption of fraud. Of course it cannot be denied that if the allowance for expenses is colourable, and used as a means of bribery, it will vacate the election. But it does not follow that, since the Reform Act, every payment of expenses must necessarily be colourable; for though residence is required by the act, still a voter may be absent at the time of the election; and even a party residing within the seven miles prescribed by the statute may incur expense and loss of time in order to exercise his franchise. If the payment of expenses to out-voters be not illegal, neither can the providing them reasonable refreshment be so. In the Herefordshire and Berwick cases, the refreshment tickets were given to resident voters; here they have been given to the out-voters alone. In the Middlesex case§ the facts were so clear that counsel declined to address the Committee upon them. The case of Radnorshire‖ is an authority in favour of the sitting member: there refreshment tickets, to the amount of five shillings each, had been given to the voters, but the Committee decided that the sitting member was duly elected.

Argument for the sitting member.

At all events, whatever may be the effect of these deci-

* *Ante*, p. 143. † *Ante*, p. 143. ‡ *Ante*, p. 144.
§ *Ante*, p. 144. ‖ 1 Peck. 475.

sions on the general question, it is clear, on referring to the words of the statute, that any acts of this nature, in order to affect the sitting member, must have been done "in order to be elected." In order to constitute bribery, the payment or the promise must be made previous to the voting. A voluntary payment after the election, or entertainment afforded to voters after polling, will not have that effect. The cases of Hughes *v.* Marshall* and Lord Huntingtower *v.* Gardiner,† are conclusive authorities upon this point. Now in this case no proof has been given of any previous agreement with the voters.

Then as to the treating, it appears that by far the greater part took place before the teste of the writ. Many of the houses were opened without orders, and the payments of Turner may have proceeded on the belief that entertainment had been supplied to the non-residents, for whom it was not illegal to provide refreshment. Much stress has been laid on the sum paid to Turner by the sitting member; but it must be remembered that the canvassing began as early as June: that great expense may have been incurred without any violation of the law between that time and the teste of the writ, as for instance, in the procession on the day of nomination, and that the legitimate expenses of the election would also have been defrayed out of that sum. It is also observable that here no draft was drawn or paid to Turner during the election; a circumstance which was strongly insisted on in the Taunton case.‡ The case of Chester§ was far stronger than this. There four thousand tickets were distributed among the resident voters; they were current about the town, they lay in numbers in the committee-room while the sitting members were present; there General Grosvenor himself ordered up wine; but because the general treating was not actually brought home to the sitting members, the Committee declared them to be duly elected.

* 2 Cromp. & Jerv. see *post*, note A.

† 1 B. & C. 297; see *post*, note A.

‡ Minutes, February, 1831. § 1 C. & D. 68.

*The Committee resolved that a case of treating had been made out against the sitting member, Mr. Thomas Stonor. They intimated that they would farther consider the terms in which their decision should be reported to the House.† Sitting member guilty of treating.

The material acts which affected the sitting member having been performed through the instrumentality of Turner, the question of his agency became a subject of considerable discussion during the course of these proceedings. As the Committee several times negatived the fact of agency, and ultimately decided that it had been proved, it may be useful to enter into the state of the evidence upon which the respective decisions proceeded. Proof of agency.

When the question was first raised, the evidence relating to Turner, which had been adduced before the Committee, was as follows:—It appeared that carriages of various descriptions having been furnished for the use of Mr. Stonor's committee, for a procession on the day of nomination, and the conveyance of voters during the election, a bill, amounting to 82*l.* 6*s.* was delivered to Turner; and that on the latter objecting to the amount, the owner applied personally to Mr. Stonor himself, who replied that he had seen the items, and referred him to Turner to be paid, and Turner accordingly paid him 50*l.* in part-payment. It was proved that Turner had ordered and paid for the printing of the tickets and hand-bills before-mentioned, together with the stationery for Mr. Stonor's committee. It was in evidence that Turner was constantly present at the committee-room, giving Evidence as to Turner's agency.

* The sitting member called no witnesses.

† As it is obvious that the payment of expenses to out-voters, (the fact of which was clearly established in this case,) if illegal at all, must come under the denomination of bribery, and as the resolution of the Committee went only to the extent of declaring the sitting member guilty of treating, omitting all mention of bribery, it would at first sight seem, that the Committee did not consider these payments to out-voters illegal; but it must be borne in mind that a clear case of treating had been made out, and that, as has already been stated, the counsel for the petitioner expressed their willingness that the election should be declared void on that ground alone.

directions and acting in all respects as one of the committee, and that Mr. Stonor himself was backwards and forwards at the committee-room. This being the state of the evidence, a witness named Bartlett having deposed that he was employed by Turner to attend the committee-room, was about to give evidence as to his filling up and signing refreshment tickets at the committee-room, when the evidence was objected to.

Mr. *Follett*, in support of the objection, contended that the agency of Turner, by whom Bartlett had been employed, must be proved, before the acts of either could be given in evidence to affect the sitting member. The agency of Turner had not been proved; the fact of a person being a member of a candidate's committee not being sufficient to constitute him the agent of that candidate. In the Dublin case* that point was expressly decided. There bribery had taken place in the committee-room; but the Committee decided against admitting the evidence, on the ground that the candidate must be first shown to be connected with the act.†

Mr. *Law*, contrà, cited the case of Ridler *v.* Moore and Francis.‡ That was an action brought by a publican to recover the amount of his bill incurred during a contested election, at which the defendants had been candidates, by order of their committee. Lord *Kenyon* held that the plaintiff was entitled to recover, the committee having been the agents of the candidates.

Mr. *Follett*, in reply, observed that in the case of Ridler *v.* Moore, the fact of the committee being agents of the sitting member was specifically proved, and the judgment of Lord *Kenyon* proceeded upon that fact, but that the case by no means warranted the position that the members of a committee were, as such, the agents of the candidate.

A member of a committee is not as such the agent of the candidate.

The Committee resolved that "they would not receive evidence of what passed at the committee-room without

* Minutes, 1831.

† See the case of Chester, C. & D. 58.

‡ Clifford, 371.

proof being given of the agency of the parties concerned.*

Further evidence as to Turner's agency.

After the foregoing resolution of the Committee, one Kirry, an out-voter, was called as a witness. This witness deposed that on seeing Mr. Stonor in the committee-room, he applied to him respecting the payment of his expenses, and was by him referred to the committee-table, where he was told to vote and that all would be right; he accordingly did vote, and was afterwards desired by the committee to call the next day to be paid by Turner, and on the ensuing day he was paid by Turner in the presence of the same members of the committee-whom he had seen the day before. The statement of Kirry as to what had taken place between himself and Turner, was suffered to pass without objection, but when, after the foregoing evidence, it was proposed to give in evidence a conversation between Turner and one Ayris, the evidence was objected to. It was then urged by the counsel for the petitioner, that the agency of Turner had been sufficiently proved, inasmuch as Mr. Stonor, by referring the voter to the committee, had recognised the agency of the committee, and the committee, by referring him to Turner, had sanctioned the acts of the latter, who was moreover proved to have been a member of the committee; but the Committee resolved that they would not at present receive evidence of the conversation between Ayris and Turner. And when another witness, named Hands, was about to give evidence of

* It is obvious that under this resolution the Committee must be taken to have decided, by implication, that the proof of acts of bribery must be preceded by the proof of agency; but it should be observed that this part of the question was not expressly raised or argued before them. Upon this subject see the cases of Newry, Hertford, and Ennis, *post*.

It may perhaps be questionable whether the fact of Mr. Stonor's having referred a party, who presented a bill to him, to Turner to be paid, did not amount to a sufficient proof of Turner's agency; but here too it must be observed that this point was not pressed upon the Committee, and that the argument turned upon the effect which the fact of a party being a member of a committee would have upon the question of agency. It will be safest, therefore, to consider the decision as confined to the latter point alone.

having received money from Turner, the Committee, on the evidence being objected to, repeated their former resolution relative to acts done in the committee-room, and desired that the agency of Turner should be proved before his acts were given in evidence.

Evidence was then given that Turner was a clerk to Mr. Morrell, a banker and attorney at Oxford; that another clerk of Mr. Morrell, a Mr. Rackstrow, who also did business as an attorney on his own account, had been the professional agent of Mr. Stonor at the election, and that Turner had actively assisted him; that Turner's salary did not exceed 100*l.* a year, and that he had received the 4,800*l.* before mentioned from Mr. Stonor, between the months of August and February. After this, an objection being again taken to evidence of Turner's acts, the Committee determined that the examination objected to might be pursued, the agency of Turner having been proved to their satisfaction.

Agency held to be proved.

Where a petition contained allegations of bribery and treating, and also that the petitioner had the majority, and the petitioner had first proceeded with the bribery and treating; held that after the sitting member had been declared guilty of treating, the petitioner was entitled to go into the scrutiny;—and the sitting member declared guilty of treating, was admitted to appear as a party on the scrutiny.

The Committee having resolved, as has before been mentioned, that a case of treating had been made out against the sitting member, the counsel for the petitioner now proposed to proceed with the scrutiny. Previously, however, to entering upon this part of the case, Mr. *Walsh* for the petitioner, submitted that the late sitting member was not entitled to appear by counsel to oppose the petitioner on the scrutiny, inasmuch as having been declared guilty of treating, and having consequently lost his seat, he could no longer be considered a party in the cause, and had therefore no *locus standi* before the Committee. In support of this position he cited the second Canterbury case.* There two candidates, who on a former petition had been declared guilty of bribery, having been again returned, notwithstanding due notice of their ineligibility had been given to the electors, the Committee declared the sitting members not duly elected, and refused to allow the counsel for the late sitting members to bring evidence to disqualify the other candidates. Upon this

* Clifford, 361.

the counsel for the sitting members withdrew, their clients being no longer parties to the cause, and the other candidates were declared duly elected.

The chairman observed, that the case referred to was not in point, for there the votes given for the sitting members having been thrown away, the other candidates were at once entitled to the return.

Mr. *Follett*. There can be no question that if the scrutiny is gone into, the sitting member is entitled to appear as a party in the cause. But there is an anterior question, upon which the Committee will have to decide, namely, whether the petitioner has a right to go into the scrutiny at all. It is submitted that he has not. The petitioner has chosen to go into the question of bribery first: the result has been that the election has been declared a void election; the petitioner cannot therefore now go into a scrutiny to entitle himself to the seat. The case of Colchester* is directly in point. In that case the petition stated that the petitioner had the majority of legal votes, and it also alleged a want of qualification in the sitting member. The counsel for the petitioner entered first upon the question of qualification, and the Committee determined on that part of the case that the election was void. The counsel then proposed to go into the scrutiny, but the Committee, after argument, refused to allow them to do so, and the election was declared void, and a new writ issued. The reason is obvious—it is that in such a case there is no one to represent the electors in contesting the scrutiny with the petitioner. According to the position contended for on the other side, there is no one legally entitled to contest it; but at all events it is certain that there is no one legally bound to do so, and the electors themselves are not parties to this proceeding. Of course there can be no obligation on a party, who has been deprived of the seat, to incur a considerable expense in such a contest, after he has lost all interest in the proceedings.

* 1 Lud. 413.

Mr. *Harrison*, contrà. It will be conceded on the part of the petitioner that the late sitting member must be admitted to oppose the petitioner on the scrutiny. But the petitioner cannot be prevented from going into the scrutiny. The practice for thirty years has invariably been, that where a petition contains allegations of bribery and treating, those allegations should be first gone into. In the case of Galway,* the return of Mr. Martin, the sitting member, was first declared void on the ground of bribery, and afterwards the petitioner went into a scrutiny, and established his right to the seat. The same course was pursued in the Great Grimsby† case of last session.

Mr. *Follett* in reply. Such a practice would be most inconvenient, as it would lead to great unnecessary expense and waste of time; neither has the practice been unvarying, for in the case of Dorsetshire‡ the scrutiny was first gone into. In the cases cited no objection was taken to the course pursued; they cannot therefore preponderate against the decision of a Committee in a case where the point was expressly raised. The Colchester case has never been overruled, and it is an authority precisely in point to the circumstances of the present case.

Mr. *Harrison* here suggested that the effect of the Colchester case upon the present question would be entirely changed by a reference to a manuscript note of Mr. Luders, annexed to the report of the Colchester case, in a copy of his work bequeathed by that gentleman to the Society of the Inner Temple.

The Committee, after taking time to consider, resolved that the petitioner should proceed with his case.§

Godfrey's Case.

The counsel for the petitioner then proceeded to question the vote of *Francis Godfrey*. It was admitted that this voter had not been objected to before the barrister.

* 82 Journ. 487. † 86 Journ. 715. ‡ 86 Journals.

§ The Committee having adjourned the consideration of the question till the following day, the MS. note before referred to was produced before them. How far it may have influenced their decision the reader is left to judge, from a perusal of its contents. See post, note (B.) p. 172.

Mr. *Follett* objected to the vote being gone into. The following is the substance of his argument:—*

An objection cannot be taken to the qualification of a voter on a ground existing at the time of registration, whose name was not objected to before the revising Barrister.

This voter not having been objected to before the barrister, his vote cannot now be questioned before the Committee. The point has already been expressly decided by the Committee in the Petersfield case.† It has also been decided by implication by the Committee in the Bedford case.‡ There, notices of objection, in which the residence of the objector was omitted, had been held by the revising barrister to be bad, and he refused to allow the votes to be disputed. The Committee decided, after argument, that the notices were bad.§ It would have been useless to discuss this question if the votes could have been at once gone into before the Committee.

The intention of the legislature on this subject, may be easily ascertained by an attentive consideration of the provisions of the Reform Act. According to the provisions of that act, the conditions of exercising the elective franchise are referable, not to the time of election, but to the time of registration. The 27th, 32d, and 33d sections all contain the same condition, namely, "that the voter shall be duly registered according to the provisions hereinafter contained." Then come the clauses which prescribe the manner in which the registration is to be carried into

* For a fuller report of the arguments on this point, the reader is referred to the case of Bedford, *ante*, p. 48. It was not originally the intention of the Editors to give a second report of the arguments on the same point, but the paramount importance and complete novelty of the subject, and the circumstance that the case in support of the limitation of the jurisdiction was argued by different counsel, between whose reasoning, though in all material points the same, some shades of difference will be found to exist, have on farther consideration induced them to supply a concise report of the argument of Mr. Follett in the present case. As the case in support of the entire jurisdiction was argued before both Committees by Mr. Harrison, a short abstract only of his argument is, for the sake of distinctness, given in the present instance, and the reader is referred to the full report of the very able and learned argument which has already been given in the Bedford case.

† *Ante*, p. 35.

‡ At the time the argument was going on in this case, the final decision of the Bedford Committee on the same point had not yet been come to. The discussion was carried on at the same time before both Committees, and the decisions took place nearly about the same time. § *Ante*, p. 48.

effect. The overseers and town-clerks are to affix the lists of the voters and claimants on the church-doors or other conspicuous places, so that every elector may have an opportunity of ascertaining what names have been inserted on the lists; then the 47th section gives the right of objecting, coupling however with it the condition of giving due notice according to the form prescribed by the act. It is clear, therefore, that the most complete notoriety is secured, and ample opportunity of objecting afforded to all parties interested. By the 50th section jurisdiction is given to the barrister; but that jurisdiction is limited to cases in which notice of objection has been given. The legislature assumed, with great reason, that parties interested would give notice of objection, after the publicity which is secured by the provisions of the statute. Then the lists, after having been revised by the barrister, are to be transmitted to the returning officer. They are to be copied into a book, which is emphatically termed in the act, "The Register of Electors entitled to vote." The 58th section is very important. That section confines the questions which may be put to the voter on polling, to three, which refer to the identity of the voter, to his being in possession of the same qualification, and to his not having voted before. As to all other matters the register is to be conclusive. Thus the whole machinery which existed for the investigation of votes, is transferred from the election to the registration.

The 59th and 60th sections give an appeal from the jurisdiction of the barrister. By the 59th parties rejected by the barrister may tender their votes at the poll; and by the 60th, upon a petition to the House of Commons, the petitioner, or person defending the return, may impeach the correctness of the register, by proving, that, in consequence of the decision of the barrister, the name of any person who voted, was improperly inserted on the register, or the name of any person who tendered, was improperly omitted. Here then the appeal is given in cases only where there has been "*a decision of the barrister*;" consequently, where, no objection having been

taken, there has been no decision of the barrister, the register must be held to be conclusive.

It should also be borne in mind, that one of the objects of the Reform Act was the diminution of expense to the candidates. One means to that end is the system of registration. But if votes not objected to before the barrister can be questioned before a Committee, the registration becomes an idle form. Parties will not go to the expence of objecting to votes before the barrister, if, without having done so, they can impugn them before a Committee of the House of Commons.

Argument for the entire jurisdiction.

Mr. *Harrison*, contrà. The Committee have authority to inquire into every vote on the poll. The jurisdiction over parliamentary writs has from the earliest times belonged to the House of Commons. They contested the point with the Crown in the reign of Queen Elizabeth, and refused to acknowledge the authority of the Chancellor and Judges in these matters.* Their exclusive jurisdiction has been asserted and maintained by subsequent resolutions, and recognised by repeated enactments of the legislature.† Now the construction contended for would have the effect of intrusting to revising barristers and overseers the jurisdiction which the House refused to concede to the Lord Chancellor and Judges. It cannot be supposed that the legislature intended such a result.

The jurisdiction of parliament is a part of the law of the land, as much as the jurisdiction of any other court; it can therefore only be abrogated in the same manner as the jurisdiction of any other court, namely, by an express and positive enactment of the legislature. There is no such provision in the Reform Act. The decisions of courts of law upon statutes passed in pari materiâ, have established, that a prior act of parliament cannot be repealed by a later, unless there be express words, or

* Glanville. Preface, p. xliv. D'Ewes' Journal, 396, 397.

† Resolutions, 1624, and 2 Feb. 1770; and statutes cited *ante*, p. 52.

the terms of the latter are wholly inconsistent with the former. But where two statutes in pari materiâ are consistent, and can stand together, the latter is no repeal of the former; *Gregory's case,** *Forster's case.*†—*Viner's Abridgment, title Statute.* More especially when a jurisdiction previously existing in one court has been given to another, it has been held that the jurisdiction of the former was not abolished, except there were express words to take it away. *Rex* v. *Moreley,*‡ *Sheriff* v. *Coates.*§—1 *Blackstone's Comm.* p. 87.

Now, assuredly no statute or jurisdiction can be of greater authority than the ancient and high privileges of parliament; the Reform Act cannot therefore take away the jurisdiction of the House, unless that jurisdiction is expressly excluded, or is wholly inconsistent with the provisions of the act. It is neither the one nor the other. It is clear that there is no express repeal. On the contrary, the 75th section provides "that all laws, statutes, and usages respecting the election of Members of Parliament, in force at the time of the passing of the act, shall remain in full force, except in so far as they are repealed by the act, or are inconsistent with the provisions thereof." Neither is the jurisdiction inconsistent with the provisions of the act, for all that the legislature can be considered to have intended is, that the registration shall be substituted for the jurisdiction of the returning officer at the poll. Consequently, the jurisdiction of the House over the entire poll is necessarily consistent with the provisions of the statute.

One of the objects of the Reform Act was to prevent persons from voting who are not entitled to vote. This part of the statute is remedial as being directed against a fraud; for the insertion on the register of persons not entitled to the franchise is clearly a fraud. It is a fraud on the candidate, a fraud on the constituency, and a fraud

* 6 Rep. 19, 6. † 11 Rep. 57. ‡ 2 Burr. 1041.

§ 1 Russel & Mylne, 159; and see *Ex parte Lowe,* 1 D. & C. 84.

on the House of Commons. The statute must therefore receive a liberal construction, in order that the mischief intended to be obviated may be effectually prevented. *Twynes' case.**—2 *Black. Com.* p. 88. A distinction has always been admitted in the construction of legal provisions when applied to the prevention of the consequences of an offence, or to the punishment of the offender, and a more remedial construction has been admitted in the former case. Thus, in Felton *v.* Easthope,† Lord Tenterden lays it down, that bribery by an agent will avoid the election, whether committed with or without the knowledge of the principal, though, to involve the latter in penal consequences, it must be committed by his authority.

It will be no answer to that part of the argument which turns upon the probability of fraud, to say that penalties are provided by the statute against the misconduct of the officers acting under it. The reason laid down in the Chippenham case‡ for retaining returns within the jurisdiction of the House, applies with full force here:—namely, that no punishment of the returning officer would protect the constitution against the consequences of the false return; and therefore, though the punishment of the officer may be left to the courts of law, the jurisdiction over the return must reside with the House. Besides, there is another mode in which fraud will be extensively practised if this construction should be adopted. Parties will make fraudulent objections, in order to deter others from objecting to particular voters, and will then withdraw their objections when the vote comes to be disputed before the barrister. By this means bad votes will be enabled to pass without inquiry. Upon grounds, therefore, of public expediency as well as of strict law, the jurisdiction of the House over the entire poll must be held to remain on the footing on which it stood before the passing of the Reform Act.

* 3 Co. 32. † Rogers' Elect. p. 220. ‡ Glanville, p. 59.

Reply. Mr. *Follett* in reply.—The expediency of the jurisdiction given to the revising barristers and overseers, or of the system introduced by the Reform Act, is not the question. Any defects in the operation of that system may be matter for legislative interference, but the only question now is as to what is the law according to the provisions of that statute. This observation would apply to the argument founded on the probability of fraudulent objections, but the fact is, that there can be none such; for the time for objecting must have elapsed before the overseer publishes the list of objections, and before, therefore, an elector can know whether any other person has objected to a particular voter or not. If the proposition contended for on the other side be correct, this consequence must follow, namely, that any person not having claimed to be on the register may tender at the poll, and may have his right to vote inquired into before a Committee of the House. For the provisions of the Reform Act are precisely the same in respect to claimants, as in respect to voters objected to. In both the 59th and 60th sections, the words "in consequence of the decision of the barrister" occur. And the argument on the other side is, that the jurisdiction of the House is not altered or affected by the provisions of the Reform Act, but stands exactly on the same footing as it did before, because there are no express words to exclude it. If so, it must extend to the case of tendered votes as well as of votes objected to. Yet no one will for a moment contend, that the right of a person not having claimed to be put on the register, could be gone into before a Committee. The proposition of law, that where a new jurisdiction is created, a previously existing one is not taken away, unless it is inconsistent with the new one, is admitted. But it is submitted that the jurisdiction contended for is inconsistent with the provisions of the Reform Act. That statute differs materially from any of those to which the authorities which have been cited relate. By those statutes new jurisdictions were created without any mention

being made of the pre-existing ones. But here the statute, after creating a new jurisdiction, goes on to give jurisdiction to the former tribunal in certain cases. But, according to the hypothesis of the other side, the Committee had already jurisdiction over the whole poll. Where then was the use or necessity of the 60th section? Yet it would be absurd to suppose that that clause was inserted without an object or meaning. The only inference which can be drawn from it therefore is, that the legislature intended that in all other cases, except those specified in the 60th section, the former jurisdiction should be taken away.

The provisions of the 54th section are incompatible with the proposition contended for by the other side. That section enacts, that the lists, after having been revised, "shall be deemed to be the register of electors to vote in any election, &c." It thereby establishes the right of all persons inserted on the register. It then points out the circumstances under which that right may be impeached, namely, when the name has been inserted or retained on the register in consequence of the decision of the barrister. Under these circumstances only, therefore, can the right of a voter, whose name is on the register, be called in question.

There are authorities which show that a jurisdiction may be taken away without express words, where the intention of the legislature is apparent. Such are the cases of Ex parte Lowe,* and Ex parte Benson,† which arose upon the statute 1 & 2 W. 4, c. 56. Before the passing of that act the Lord Chancellor had an exclusive jurisdiction in matters of bankruptcy. By that act a new court, called the Court of Review in Bankruptcy, was established. The act did not take away the jurisdiction of the Lord Chancellor in express terms. All that it did was to give an appeal to the Lord Chancellor: yet it was held that the jurisdiction of the Lord Chancellor was by implication taken away. The case of

* 1 Deacon & Chitty, 3. † Ib. 338.

Cater v. Knight* is also an authority directly in point in support of this position.

The 75th section, which preserves all statutes and usages which are not repealed by the act, or inconsistent with its provisions, has been much relied on. The answer is, that the former jurisdiction is inconsistent with the provisions of the act. But it is further remarkable that there is no statute at all repealed by the act. The 75th section therefore presupposes that statutes may be repealed by implication. Usages also may be so repealed; consequently, so may also be the former jurisdiction of the House of Commons.

Much has been said respecting fraud. It has been said that there has been a fraud on the candidate, but that is not the fact; for the candidate, when he offered himself to the electors, was acquainted with the state of the register, and was at liberty to stand or not, as he thought fit. If there has been a fraud at all, it is a fraud on the constituency; but the constituency have had ample opportunity of objecting. If they have not availed themselves of it, they can have no right to complain of the result of their own negligence. The Committee cannot go into this vote without repealing wholly, or in part, the 60th section. Every clause must be supposed to have a specific effect. If the Committee can go into the votes generally, that section becomes altogether a nullity. The whole machinery of registration will become utterly useless; it may mislead parties, it can be of service to no one. Votes will no longer be objected to at the period of revision, and one of the objects of the act, which was to lessen expence by substituting a local and cheap tribunal for a distant and expensive one, will be entirely defeated.

The Chairman here asked of Mr. *Follett*, whether his argument would not go to the extent of excluding the Committee from inquiring into a vote, which was objected to on the ground of the voter having received a bribe.

* 3 T. R. 442. See this case stated at length, *ante*, p. 63.

Mr. *Follett* answered, that bribery was a personal disqualification which vitiated the vote, though the party might otherwise have had a perfect right of voting. The question before the Committee was, whether the right to vote, not having been objected to before the barrister, could be questioned before the Committee.

The Committee resolved, that they would not allow any objection to the qualification of any voter at the time of registration, whose name was not objected to before the revising barrister.* After this resolution of the Committee, the counsel for the petitioner declined proceeding further with their case.

The Committee came to the following resolutions:

That Thomas Stonor, Esq. was not duly elected to serve in this present Parliament for the city of Oxford. Resolutions of the Committee.

That the last election for the said city of Oxford, so far as related to the said Thomas Stonor, Esq. was a void election.

That neither the petition nor the opposition to it were frivolous or vexatious.

Incidental points:—

In the outset of the case, a difficulty arose respecting the proof of the poll.

To prove the poll the counsel for the petitioners called Mr. James Banting, the mayor of Oxford. He stated that at the last election, at the close of the first day's poll, the books were taken by the city marshal to the town clerk's office, and locked into a desk in his presence, of which desk Jacobs, the clerk of the town clerk, had the key:† that on the second day they were delivered out by his direction, but not actually in his presence, and that at the end of that day's poll they were brought to him sealed, and then given in charge to Jacobs, to be locked up safely as before; that subsequently Jacobs, as his, Proof of poll.

* The *Petersfield* and *Bedford* Committees came to similar decisions; see *ante*, p. 35, and p. 70. See also the case of *Southampton*, *ante*, p. 125.

† See the *Dublin* case, Corb. & Dan. 91, in notis.

the mayor's, sworn poll clerk, in the presence of an agent for each candidate, cast up the poll and proclaimed it; that the poll, when checked, was found correct, and that he himself saw that the gross numbers tallied; that the poll books were then given to Jacobs to keep them in safe custody, and permission also was given him to get them printed; that from that time he, (the mayor,) had not seen them until about ten days since, when he was present whilst they were examined by the agent of Mr. Hughes; finally, that he had recently received them from Jacobs, packed and sealed for the purpose of producing them before the Committee; that Jacobs was not the deputy town clerk, nor an officer of the corporation, and that the office of the town clerk, where the books had been deposited, was one much frequented for the purposes of public business. There was no evidence as to which party Jacobs had supported at the election. The poll books were then tendered in evidence.

Mr. *Follett* objected to their being put in.—It is a well established position in election law, that the poll book is the only legitimate evidence of the election: the question here then is, whether the poll books can be put in, and that will depend upon whether they have been sufficiently authenticated. It appears that at the end of the first day's poll, the books were brought sealed to the mayor by the deputy returning officers, handed over by him to another person to keep, and delivered out again by that person on the following morning, not even in the mayor's presence. Now, this in itself is a departure from the provisions of the Reform Act, the 68th section of which directs that the books shall be publicly delivered to the returning officer at the end of the first day's poll, and kept and re-delivered by him to his deputies on the second day. Here, then, was a clear parting with the custody of these documents; nor have they been since that time under his control; on the contrary, they were placed in a public office, in a desk, the key of which was not in the mayor's possession, or in that of any respon-

sible officer of the corporation, and they appear to have passed into other hands for the purpose of having printed copies taken of them: the case, therefore, falls within those numerous precedents in which Committees have decided that the poll cannot be received until duly authenticated. In the Dungarvon case,* the clerk of the peace for the county of Waterford produced from his office papers, which he stated himself to have received from the gentleman who acted as counsel for the returning officer at the last election, who delivered them to him as the original poll. These papers were indorsed by the clerk of the peace with his name, at the time of receiving them, and they had remained in his office ever since in the same state, and sealed: nor was the seal broken until the meeting of the Committee. The hand-writing of the papers was proved to be that of Mr. Bailie, the returning officer. It was also proved that notice had been given to him to produce the poll-books. There were several poll-books at the election: a witness was called who produced one of them, which was taken in the deputy's court; that first mentioned was taken in the court of the returning officer. Under these circumstances it was proposed to put in the above papers and the poll jointly, as the poll books: the Committee, however, came to a resolution "that sufficient evidence had not been given to the Committee to satisfy them that the poll-books tendered were the poll-books of the Dungarvon election, which took place in May, 1807." In the Chester case,† the town-clerk and under-sheriff of Chester produced the poll-book, which he stated he believed he had received from the sworn poll-clerk of the sheriffs, who were the returning officers, soon after the election, at his office; that it had remained unaltered in his custody ever since, and that he was the proper officer to have the custody of it; that he had not seen the book at the close of the poll; that he received the book on the evening or the next morning

* Roe on Elections, Appendix, p. ccccxxxvii. † Corb. & Dan. 72.

after the close of the election; that he knew the poll-clerk, and was frequently in court during the election, where he saw him act as poll-clerk. Upon this evidence the Committee resolved that the poll was not sufficiently proved.* In the Limerick case,† the town clerk and clerk of the peace for the county and city of Limerick, stated, that the sheriffs were the returning officers, and that from one of them he received the poll a few days after the termination of the election; that the poll-book was sealed up in a parcel when he received it, and that it had continued so in his possession ever since. The Committee resolved, "That there had not been sufficient evidence adduced to satisfy them that the sealed up papers, purporting to be the poll-book of Limerick, were such." The Bristol and Drogheda cases are to the same effect;‡ and in the Dorset case§ the same point was made. It was there found essential to prove that the poll-book had not been out of the custody of the clerk of the peace. The same is, in point of fact, the real question here, namely, whether these books have, or have not, been so far out of the custody of the mayor, as to render it impossible for him to depose to their authenticity.

Mr. *Harrison* submitted that if such an objection as this were allowed to prevail, the inconvenience would be infinite; that instead of calling one or two witnesses for the purpose of authenticating the poll, as had been hitherto the practice, it would be henceforth necessary to call all the poll-clerks, and all the deputy returning officers, the expense of which would be enormous. In the Dorset case, in point of fact, the poll-book had been put into the charge of the clerk of the clerk of the peace, for the purpose of taking it to Dorchester for examination; but when the case was before the Committee, the poll was produced by the clerk of the peace: of its contents he

* The poll-clerk was subsequently called, and proved the authenticity of the book.

† Corb. & Dan. 89.

‡ Ib. 87, 95.

§ Minutes, 1st March, 1832.

knew nothing, and all that he could prove, or could be required to prove, was, that it had been delivered to him by the sheriff, and that it had, whilst in his possession, been unaltered. An objection having been taken to the sufficiency of such proof, counsel had refused to call the under-sheriff, on the ground that a good primâ facie case had been established by the evidence of the clerk of the peace. The same course was pursued both in the case of Wexford* and that of Pembroke.†

Mr. *Follett*, in reply, contended, that the poll-book must in all cases be produced and authenticated by the person having the legal custody. Now, in county elections, that person was by statute 10 Anne, c. 23,‡ the clerk of the peace, and hence in the Dorset case there was no doubt but that the clerk of the peace was the proper person to produce the books, but the real question there was, whether they had been proved to have been continuously in his custody, and that was not thought to be established until it appeared that the clerk who took them to Dorchester, had been employed for a long period in attending solely to the business of the clerk of the peace, and was in reality his deputy. Now, here there was no pretence that Jacobs had been in the habit of acting as such a deputy to the mayor of Oxford, and if the returning officer has been guilty of negligence, inasmuch as such negligence has been not unfrequently visited upon the sitting member, there is no reason why it should not in the present case be visited on the petitioner.

The Committee resolved that further evidence was necessary to prove the proper custody of the poll-books.

Time was upon this given until twelve o'clock the next day to bring up Henry Jacobs. That witness then stated

Thursday, February 28; further evidence required.

* Minutes, 5th March, 1830. † Minutes, 16th September, 1831.

‡ By the 5th section the sheriff or returning officer is directed, within the space of twenty days after the election, faithfully to deliver over, upon oath, to be administered by two justices, to the clerk of the peace of the county, all the poll-books of the election, without embezzlement or alteration, to be kept among the records of the sessions.

that he had been clerk to the town clerk for seven years; that at the last election he had officiated as poll-clerk for the mayor; that he had on the third day cast up the gross poll in all the books, in the mayor's presence, and that those numbers remained now unaltered; that after the result of the poll had been declared, the books had been delivered to him by the mayor for safe custody, and that he had taken them to the town clerk's office in the town-hall yard; that they remained there in a middle room, through which other clerks passed, without being locked away, for three or four days, after which they were removed to his own private house, for the purpose of being copied for printing; that whilst there, they lay in a parlour open to the family, he himself being absent the greater part of the day at the office; that a clerk named Berriman assisted in copying them, and was left once or twice alone in that occupation; that at the end of three weeks the books were taken back to the office, and after some time, when it was known that a petition was about to be presented, were locked away in the front-room. The office itself was rendered at all times accessible to the four or five clerks there employed, by placing the key over the outer door. There appeared to have been some erasures in the books; when these erasures had been made he could not distinctly state, but he distinctly swore that no alteration had been made in the numbers. The books had been twice examined since by the agents of the different parties, but on both occasions in the presence of the mayor or the clerk. The books were then again tendered.

Mr. *Follett* now submitted that Jacob's evidence had added weight to the objections already raised. The real difficulty is, that the returning officer never had the proper custody of these books: they were put into the possession of Jacobs, a person utterly unconnected with the mayor; and even that witness himself cannot give any thing like a satisfactory account of the way in which they were kept. First, they are seen lying openly in a public office, then

in a room accessible to all Jacob's family and to any others who might come in, and then entrusted further to a copying clerk. This is a legal objection to the receipt of an unauthenticated document. It is not said that alterations have been made, but they might have been made; it is clear that some erasures have been made at some time which are not accounted for, and where so little vigilance has been shown, it is impossible to say that this is a sufficiently authenticated poll.

Mr. *Harrison*, on the other side, stated that the cases reported in Corbett and Daniel* had led to a new course of practice of late years; the great inconvenience and expense resulting from those decisions had induced Mr. Adam and himself to come to an understanding that such a technical objection to the poll as the present should not be pressed, and that understanding had been acted on for the last two elections.—It is said that these documents have been so negligently kept that they might have been altered; but it is stated upon oath, that in the numbers of the poll there has been no alteration, and that is the only point at present under consideration. The object now is to show who were the candidates, and who had the majority; in other words, to prove the election and return: when the scrutiny is come to, then, if there be any doubt as to erasures or interlineations, that question may properly be raised, and the poll clerk must then be called to explain them; but as the case at present stands, the town-clerk may be considered the deputy of the mayor, and his clerk, Mr. Jacobs, has given such evidence as is sufficient, since fraud and interpolations are not to be presumed unless proved, to satisfy any reasonable scruple as to the general admissibility of this poll.

Mr. *Follett*, in reply, insisted that no one case had been, or could be cited, to show that books never in the custody of the returning officer, or of any deputy who could positively swear to their condition, ever had been admitted

* See the *Limerick* and *Drogheda* cases, before cited, *ante*, 164.

as the authentic poll. The principle of the law of evidence in this case is incontrovertible, and yesterday the Committee were so sensible of this that they required further proof to be supplied. Another witness has been accordingly called, and he has left the case in the same, or rather in a worse state than it was before; the Committee, therefore, will act consistently in abiding by their former resolution.

The Committee resolved "That the poll-books as produced be received in evidence."

Two cases occurred, in which the admissibility of witnesses who had been in the committee room during a part of the proceeding, was brought under discussion.

Witness admitted, after having been present in Committee-room.

A person named Clements being called as a witness, admitted that he had been in the committee-room on a former occasion; but it appearing, on further inquiry, that he had only been in the room during the space of five minutes, while Mr. Banting, the mayor, was under examination respecting the poll-books, the Committee determined that as the evidence of Mr. Banting related only to the production of the poll-books, the evidence should not be rejected.

Witness examined who had come into Committee-room, to avoid giving evidence.

A similar objection was taken to a witness named Wyatt; but it appearing that the witness had, on the first days of the sitting of the Committee, frequented another Committee, in the proceedings of which he could have had but comparatively small interest, and a witness who had been stationed at the door of the committee-room, to prevent the witnesses of the petitioner from going in, having deposed that he had told Wyatt that he must not go in, and that no witnesses were admitted, the Committee resolved that, "though admitting the rule, and wishing to enforce it in the strictest way, they were of opinion that this witness must be examined, as they believed he came into the room in order to avoid being examined."

A witness named Tubb, who had voted for the sitting

member, after stating that he was employed as door-keeper at the committee-room of the sitting member, was about to give evidence as to his having received payment for loss of time, when the evidence was objected to on the part of the sitting member, on the ground that the voter could not give evidence to destroy his own vote.

Voter may give evidence to destroy his own vote.

Mr. *Harrison*, in support of the evidence, contended that the utmost extent to which Committees had gone, was, that a man could not be called on to give evidence to destroy his own title, but it could not be questioned that a man might, if he thought fit, give evidence of his own bribery. This was a case of compensation for loss of time, which by the resolution of the House in the *Grantham* case, was clearly illegal. He observed, that the statute 1 & 2 Geo. IV. having provided that not more than one barrister should be employed at Irish elections, barristers have been examined as to whether they had not received a retainer.*

The Committee decided that the evidence might be given if the witness chose to give it.†

* See Minutes of Dublin case, 27th Sept. and 8th Oct. 1831.

† See this point more fully discussed in the case of Southampton, *ante*, p. 114.

NOTES.

(A.) The case of *Hughes* v. *Marshall* being a very important authority on the subject of bribery and treating, and having been referred to in argument in one or two cases reported in this work, it has been thought expedient to subjoin the following copy of the report of that case.

This was an action of assumpsit. It appeared at the trial that the defendants were supporters of Mr. Slaney at the election for Shrewsbury, in July, 1830, and had, during four days of the election, given orders, either personally or by written tickets, to the plaintiff, who kept the Elephant and Castle public house in that town, to supply provisions, ale, wine, &c. to upwards of 100 voters in the interest of Mr. Slaney, and also other persons who were not voters, and had likewise themselves taken refreshment at the plaintiff's house. After the election, the plaintiff's bill, amounting to 23*l.* 18*s.* 6*d.* had been signed by the defendants, and admitted to be just. It appeared

also from the examination of the plaintiff's witnesses, that the plaintiff's house had in the first instance been opened by Mr. Slaney's committee after the polling had commenced. The learned judge was of opinion that the case could not be within the treating act, 7 & 8 Wm. 3, c. 4, s. 1, unless the jury were satisfied that the defendants were proved to have been agents to or identified with the candidate; and he directed the jury to find a verdict for the plaintiff, if they were of opinion that the articles in question were supplied at the request and on the personal credit of the defendants. The jury found a verdict for the plaintiff; and *Godson*, for the defendants, obtained a rule *nisi* for a new trial; against which—

Curwood shewed cause.—This is not a case within the letter or spirit or the treating act, because there was no evidence to shew that the defendants were the authorized agents of the candidate. On the contrary, the jury have found that the supplies were made upon the personal credit of the defendants; and unless it be illegal for third parties, unconnected with the candidates, to supply the voters with refreshment, the plaintiff is entitled to recover. *Ribbans* v. *Crickett*,* and *Lofthouse* v. *Wharton*,† merely decide, that, for provisions supplied after the *teste* of the writ, at the request of the candidate, no action will lie; but there is no case which can carry the construction of the statute beyond that.

Godson in support of the rule.—The contract is void at common law. Treating is a species of bribery, and bribery is a crime; *Rex* v. *Pitt*, *Rex* v. *Mead*;‡ and, consequently, every contract founded on bribery is void. It is immaterial, in this view of the case, whether the bribery were committed with the knowledge of the candidate, or whether the parties bribed voted for the candidate on whose account they received the bribe. *Sulston* v. *Norton* §

The case is also within the treating act. The statute 7 & 8 Wm. 3, c. 4, applies not only to acts of treating by the candidate or his agents, but contains also the words, "by any other means on his or their behalf;" which words must be construed to extend to all undue means mentioned in the clause, notwithstanding they be resorted to by strangers without the authority of the candidate.

[Lord *Lyndhurst*, C. B.—"On his or their behalf" must be understood to comprehend only acts resorted to at the desire or with the knowledge of the candidate.]

It sufficiently appears here, that the ways and means resorted to were with the knowledge of the candidate; for the house was in the first instance opened by his committee. If proof of direct agency were required, the statute might in every case be evaded. But, independently of this, if the act be forbidden by the statute, it cannot form the ground of an action. *Langston* v. *Hughes*.‖

[*Bayley* B.—If it be illegal in the candidate, it may perhaps be illegal in any other person. But there are other words in the statute which are very

* 1 B. & P. 264. † 1 Camp. 530, n.
‡ 3 Burr. 1335; S. P. 1 Sir W. Black. 380.
§ 3 Burr. 1235; 1 Sir W. Bl. 317. ‖ 1 M. & S. 593.

material. The act done must be in order to be elected, or for being elected. How can we say whether any portion of this bill is for the purpose of getting Mr. Slaney elected? It does not appear whether the voters had polled before they got refreshment. The argument would go to this, that, if a gentleman residing in the election town kept his house open, and gave refreshment to voters coming from a distance, he might be indicted for a breach of the act of parliament.] *Cur. adv. vult.*

Lord *Lyndhurst*, C. B., now delivered the judgment of the court:—

We are of opinion that the rule in this case for a new trial should be discharged. One point was, whether the case fell within the provisions of the treating act;* and we are of opinion, on the evidence at the trial, that it did not; and in that respect we agree with the learned judge who tried the cause. It is perfectly clear, from the language of that statute, that no transaction falls within the provision of the act, unless the candidate or person to be elected has some share in the transaction. The words of the statute are these: "that no person or persons hereafter to be elected &c., after the teste, &c., shall or do hereafter, by himself or themselves, or by any other ways and means, on his or their behalf or at his or their charge, before his or their election, &c. directly or indirectly give, present, or allow to any person or persons having voice or vote in such election, any money, meat, entertainment, or provision, &c., in order to be elected, or for being elected, &c." Now it is perfectly clear from these words, that, to bring a case within the above provision, the acts mentioned in the statute must be done by the candidate, that is, not by him only, in his own person, but by him, or by some person acting for him and on his behalf. It appears to us that there is nothing in the evidence in the present case to affect the candidate; and indeed the question was put to the jury, whether the refreshments were supplied on the credit of Mr. Slaney, or on the individual credit of the defendants; and the jury found that they were supplied upon the credit of the defendants. We think, therefore, that this case is not within the provisions of the treating act.

But another point is put independently of the treating act; and it is said, that it is not very material whether the case falls within the enactment of that statute or not; for that, if the plaintiff furnished these provisions with a view to influence the election, such conduct would be illegal at common law, and no action would be maintainable. Now that is true, if such a case were made out. If bribery is brought home to the party, he is guilty of an offence at common law, and can maintain no action. But we do not find that the evidence is sufficiently clear to establish such a case. In the first place, it does not appear that the parties to whom these refreshments were furnished had not previously voted; in the next place, it does not appear whether they resided in the town or came from a distance, which might make it requisite for them to have moderate refreshment. It appears to us, therefore, that the evidence is not sufficiently strong to show that the conduct of the defendants was illegal, even if the plaintiff had been proved to be aware of what they were doing. It is to be remarked also, that the ex-

* 7 & 8 Wm. 3, c. 4.

penses were inconsiderable when compared with the number of persons who shared the refreshments. There is nothing, therefore, to show that bribery took place to influence the election. A considerable part of the bill, at all events, was incurred by the defendants themselves, and by persons who appear to have had nothing to do with the election; and for that they would be liable. So that if the cause went down again for the purpose of inquiring whether the refreshments were supplied with a view to influence the election, there would be a verdict to that extent, at least, against the defendants. Upon the whole, however, we are of opinion that no case is made out to show that the conduct of the defendants was illegal; and if so, there is nothing to prevent the plaintiff from recovering, and this rule must be discharged.—Rule discharged.

The case of Lord *Huntingtower* v. *Gardiner* was as follows:—This was an action of debt for penalties, under the 2 Geo. 2, c. 24, s. 7, for bribery at an election. At the trial it was proved that, after the election, the defendant received the sum of 30*l.* for having voted for S. L. and Sir J. C., but no evidence whatever was given of a pre-existing agreement, and the jury by their verdict negatived any previous agreement. When the case came before the Court of King's Bench, that Court held that such a payment was not within the act; and *Holroyd*, J. said, "the words of the act are evidently prospective, and must be construed as if they had been, 'in order to give,' or 'in order to forbear to give:' the section provides not only for receiving a reward, but for making an agreement for the receipt of money, although it be not paid till after the election, but the words of the act do not go beyond that; we cannot, therefore, infer that a voluntary payment after the election comes within the meaning."

(B.) The following is a copy of the MS. note of Mr. Luders, on the case of Colchester, referred to *ante*, p. 152.

"In the pamphlets and arguments on the Middlesex election, which engaged parties so warmly after 1768, the cases of Malden, Bedford, 21 Journ. 138, and Lyme, were all relied on as cases in support of the doctrine of the votes being thrown away; but none of them are so according to the reports in the Journals, or, as I had said before, of Malden and Lyme. In the Bedford case the resolution proceeded upon the consent of the parties, and does not appear thereby governed at all by this principle. Mr. Ongley, who had a majority, held a disqualifying office, (and he was a petitioner too,) and the other was seated by the House upon Ongley's declining to go on after the House had determined that he held a disqualifying office, which was the only point in dispute. It is strange therefore that Dyson, in his pamphlet, "The Case of the late Election, &c. considered," should have relied on those cases for the point; as see in p. 38 of the book, and see 1 Junius, p. 1356; Glanv. 41; and 10 Journ. 287.

This case happened on the Canterbury petition, in the spring of 1797. These were petitions from electors only, on the merits of the election. The Committee determined that the sitting members were ineligible for bribery at the former election, and likewise that they should not be permitted to

oppose the claim of the petitioners for the other candidates to be seated. But the Committee would not enter into the merits of this claim, and then determined that those candidates ought to have been returned, without any thing more, thus confining their judgment to the return only. After the entry of this determination on the Journal, an order was made for leave to the electors to petition against this election. A petition was accordingly presented, but was not proceeded in, from a failure in the matter of recognizance.

In 21 Journ. 671, Honiton, the report states, "and no counsel or witnesses appearing to support the said voters on the return of Mr. Serjt. S., the late sitting member, (deceased,) the Committee came to the following resolutions, &c." plainly giving reasons to infer that they might have been heard. It can hardly be contended that a breach of the order, or any act after the election, can work an incapacity more fully than such an act as would occasion a void election, if done during the election; if, for instance, bribery incapacitates the candidate returned, yet in such case the other party never contended for a right to proceed *ex parte*, after having proved bribery against the sitting member. In such cases the petitioner must prove a real majority on his side, in opposition to the sitting member guilty of the bribery, in order to obtain the seat. But there is better reason in this case for the point contended for by the petitioner, than in such as that of Colchester. For here the cause of incapacity happens during the election, and may be supposed to have had an unlawful influence upon it. But in the Colchester case it was an act unconnected with the election which made the objection to Potter.

The Committee omitted to call on the petitioner's counsel to know if they were prepared to go on with the merits of this case against Potter. This they ought to have done; but it was implied in the conduct of the petitioner's counsel throughout, that they could not or did not mean to proceed by proving a majority as against Potter. Therefore this was only an omission in point of form, which the Committee might well think immaterial and unnecessary from what they had seen of the cause, and of the petitioner's chief object. If the petitioner's counsel had put the case on a different footing, I dare say they would have allowed Potter to oppose the petition as in any other case."

CASE VII.

BOROUGH OF NEWRY.

The Committee was chosen on Thursday, March 7th, 1833, and consisted of the following members.

Sir John Byng, (*Poole,*) Chairman.

Hon. A. Ashley Cooper, *Dorchester.*	James Loch, Esq. *Kirkwall.*
G. Granville Harcourt, Esq. *Oxfordshire.*	Sir Hedworth Williamson, *Durham, North.*
Richard Bethell, Esq. *Yorkshire, West Riding.*	Robert Pigot, Esq. *Bridgnorth.*
John Parker, Esq. *Sheffield.*	Lord Viscount Molyneux, *Lancashire, South.*
Sir Hyde Parker, Bart. *Suffolk, West.*	Hon. Sidney Herbert, *Wiltshire, South.*

Petitioner—Dennis Maguire, Esquire.

Sitting Member—Lord Arthur Marcus Cecil Hill.

Counsel for the Petitioner—Mr. Harrison and Mr. O'Hanlon.

Agent—Mr. George Ogle.

Counsel for the Sitting Member—Mr. David Pollock and Mr. Follett.

Agents—Messrs. Handley and Durant.

The petition.

THE petition stated—That at the last general election the petitioner, Dennis Maguire, Esquire, and Lord Arthur Marcus Cecil Hill, were the only candidates to represent the Borough of Newry in parliament, and that upon the close of the poll Lord A. M. C. Hill was declared to have the majority of votes, and was returned accordingly. It then proceeded to charge various

Bribery and treating.

acts of bribery and treating, as well after as before the teste of the writ, against the sitting member, his agents, friends, and managers. It stated further, that the said Lord Arthur Marcus Cecil Hill, in order to derive an

advantage over the petitioner at the said election, and for the purpose of procuring himself to be returned at the said election to serve in this present parliament for the said borough, did employ, as his conducting agent, Mr. John Craig, the then clerk of the peace for the county of Down, and in which county the greater part of the said borough, and the place of election thereof, are situated, and who, as such clerk of the peace, has by law, and had at and during the said election, the custody of the original affidavits of registry of the electors of the said borough; and that the said John Craig, at such election, acted as such conducting agent for the said Lord Arthur Marcus Cecil Hill; which employment of the said clerk of the peace, as such conducting agent, the petitioner humbly submitted to have been unconstitutional and illegal; that the said Lord Arthur Marcus Cecil Hill, by the said corrupt and illegal practices, was and is wholly disabled and incapacitated and ineligible to serve in parliament for the said borough of Newry; and that by the several illegal ways and means aforesaid, the said Lord Arthur Marcus Cecil Hill obtained an apparent and colourable majority of votes over the petitioner, and procured himself to be returned for the said borough; whereas the petitioner had a legal majority of votes at the said election over the said Lord Arthur Marcus Cecil Hill, and ought to have been returned to serve for the same. Prayer: that the election and return of Lord A. M. C. Hill be pronounced null and void, and that the petitioner be declared duly elected.

Undue employment of the clerk of the peace as Lord A. M. C. Hill's agent.

Mr. Harrison, for the petitioner, abandoning the scrutiny, opened a general case of bribery, stating it to have been originally an offence at common law, and citing the resolutions, statutes and authorities in point, up to the present day.* The Committee would have

Case for the petitioner.

* Resolutions of the House of Commons, 1700 to 1833; 2 Geo. 2, c. 24; Black. Commentaries, vols. 1—4; *Combe* v. *Pitt*, 3 Burr. 1886; *Rex* v. *Vaughan*, 4 Burr. 2500; *Rex* v. *Plympton*, 2 Lord Raym. 1377. See also the cases collected in Rogers on Elections, p. 213.

further to decide, whether an offer to bribe did not amount as much to a disqualification as bribery actually completed. In the Barnstaple case* the contrary had been held; but in the Wootton Bassett† and the Taunton‡ cases, the validity of that decision had been much doubted, and the point, therefore, would now be again raised for adjudication.§ Finally, another important matter for the consideration of the Committee would be, the allegation respecting the employment of the clerk of the peace as Lord M. Hill's agent: that functionary, according to the Irish law of elections, has charge of the certificates of registration, and it would be seen that such a delay had in this case taken place, in the delivery of the certificates to certain voters, as could only be imputed to such an improper negligence, or still more improper motive, as would doubtless bevisited, by way of example, by the severe animadversion of the Committee.

It was then proved in evidence that there had existed in Newry, some time previous to the last election, a society called "The Union Club." The members were chiefly voters for that borough, and amongst them were Captain Seymour, Mr. James Lisle, Mr. John Ritchie, and Mr. John Boyd. Their meetings were at first monthly, but at the time of registration, and shortly previous to and during the election, they were held nightly. The usual number of members present was fifty or sixty. Each paid his own expenses, and they met at Black's tavern, in Hill Street. The club had originally exerted

* 1 Peck. 91.

† Minutes, 1819. In that case the chairman, Sir J. Stewart, (who had been a nominee in the Barnstaple case,) said that the decision in that case had been misunderstood, for that the decision of the Committee had proceeded on the ground that the offer had not in fact been made.

‡ Minutes, 7th March, 1831.

§ The testimony of Catherine Havern, who was to have proved this case, having been discredited, the point was never fully raised for the decision of the Committee. See *post*, p. 178. See also, on the subject of offers of bribes, note to the Poole case, 2 Douglas; 2 Hawk. P. C. c. 67, s. 10; and Lilley v. Combe, 1 Selwyn N. P. 650; and see the argument in the Hertford case, *post*, p. 200, 208.

its influence for Colonel Needham, and a canvass had been first made in his behalf, but was subsequently abandoned. Mr. John Boyd and Mr. James Lisle, being then deputed by the club, proceeded to the residence of the Marquis Londonderry, forty miles distant from Newry, to invite Lord Arthur Marcus Cecil Hill to offer himself as a candidate. The invitation was accepted, upon the understanding that Lord Marcus should pay his own expenses, and he accordingly made his first appearance in Newry on the Sunday previous to the election.

Captain Seymour, Mr. John Boyd, Mr. James Lisle, Mr. Ritchie, several other members of the club, and a body of friends, to the number of thirty or forty, canvassed with Lord Marcus, and he was in the habit of attending the club also every evening as a visitor, for the purpose of being introduced to the electors, paying his own expenses like the rest. An attempt was made to prove that conversations had been carried on there in his presence with respect to the best method of securing votes, and also that the club had acted in every respect as his confidential committee. It appeared, however, that the business of the election had been conducted by the club on its own account, sometimes at Black's tavern, and sometimes in the tally rooms in and about the market-house. Lord Marcus had been seen in these tally rooms on one occasion only; Captain Seymour was frequently there, but the principal manager seemed to have been Mr. James Lisle.

The first witness called in proof of the charge of bribery was Catherine Havern, who deposed to a meeting with Lord Marcus Hill, on the steps of the tally room, in the dusk of the afternoon, and a promise of money for her husband's vote; the payment was to have been made on the following Wednesday, but she never claimed it, preferring that her husband should vote for Mr. Maguire. She had received 10*l.* from the wife of Thompson, a person in the interest of Lord Hill's party, and the rent of her

cottage had been also paid by them; and this money she took, intending nevertheless, at the same time, that her husband should vote for the other candidate, which in point of fact he did. On being requested to point out Marcus Hill, she pointed to Lord Molyneux, a member of the Committee.*

Thomas M'Farlane, the next witness, stated that he had voted at the last election for Lord Marcus Hill, and that he had, during the course of that election, received a visit from Mr. James Lisle.

Upon the next question, as to what passed on that occasion, Mr. Pollock objected to any evidence of any thing that had been said or done by Mr. James Lisle, unless it were first proved that he was the agent of the sitting member.

Agency must first be proved.

Argument upon Lisle's agency.

Mr. Harrison, in answer to the objection:—The question is, whether Mr. Lisle has not already been sufficiently connected with the sitting member to enable the petitioners to enter into this line of examination. It has been proved that this club took an extraordinary interest and part in the election, meeting every night, and being in constant communication with the tally rooms, in which Mr. Lisle is seen to be constantly and busily engaged. This same person is one of the deputation first sent to invite Lord Marcus Hill to Newry, and he afterwards canvasses with him, being all this time an avowed member, and the organ of the club: the connexion, therefore, between the candidate and that society is obvious. Now, in the first Dublin case,† it was proved that there was a room to which there was no access but through the committee-room, and it having been held that the business transacted in that private room might be well presumed to have been connected with the election, evidence was admitted of the acts there done. So also in

* The evidence of this witness appears not to have been credited by the Committee.

† See Minutes, July, 1831.

the Liverpool case,* the committee-room of the candidate being proved to be the place where the business of the election was carried on, proof of circumstances which occurred there, was deemed sufficient to establish agency.

Then as to the introduction of Lord Hill and his canvass. In the first Penryn case,† 1820, the agency of Winn was principally established by his canvassing with the candidate, soliciting votes for him at other times, and appointing persons to conduct and protect him. In the second Penryn case, 1827,‡ it being admitted that agency must first be established, the proof turned entirely upon the introduction and canvass of Mr. Manning; and it having been shown that a person named Sowell had introduced the candidate, canvassed with him, and taken an active part in the proceedings, evidence was then admitted of his acts as an agent. Again, in the New Windsor§ case, canvassing and paying a publican a bill was deemed sufficient. Here, then, there is ample ground for presuming Lisle to have been an agent. He introduced Lord Hill, meets him at the club every night, canvasses with him, presides in the tally room: these are then unquestionably strong reasons why evidence of the acts of this man should not be shut out.

Mr. Pollock, in reply:—The Dublin and Liverpool cases turned entirely upon the question of what took place in the candidate's committee. It is said that in the latter case Mr. Ewart was not proved to have been a party to the proceedings of that body, but his friends were all members of and actively engaged on it. Now, here we have no evidence of any committee at all; on the contrary, Mr. Boyd has distinctly stated that the club

* See the Minutes in that case, printed by order of the House.

† Corb. & Dan. 61. In this case there was also direct proof of Winn's having been sent by Mr. Swann, the candidate, to meet a voter, and that he afterwards, in a private room, offered him money for his vote.

‡ Minutes, 28th February, 1827. The fact of Sowell having introduced Mr. Manning, having been afterwards disproved, the evidence of his acts was in consequence struck out.

§ 2 Peck. 194.

acted independently and on its own account. It is true that Mr. Lisle solicited Lord Hill to become a candidate, but that does not show him to have been either the servant, agent, or in any way under the direction of Lord Hill. Mr. Boyd was also one of the deputation, and assisted in the canvass, yet no one pretends that Mr. Boyd was an agent. But it is said that there is good ground for presuming agency until the fact be negatived by the sitting member; but it is submitted that the committee will entertain no such presumption, especially when, from the impossibility of knowing what acts of agency might be insisted on, Lord Hill could not be prepared with evidence to rebut them.

The Committee resolved that the question objected to could not be at present put.

Further evidence was then given of Lisle's canvassing, and of his presence in the tally rooms. Mr. George Ogle, also, the petitioner's agent, deposed to having remarked to Lord Hill, on the hustings, "That he had too many active friends for them, the other party, particularly Mr. James Lisle, who was a host in himself:" to which Lord Hill replied, "He is, indeed, and so very respectable a man!" Thomas M'Farlane also proved that he had gone up with Mr. Macguire's tally, but had then voted for Lord Marcus Hill, according to contract with Mr. Lisle.

After this evidence Mr. O'Hanlon, for the petitioners, proposed to ask the witness "whether Mr. Lisle gave him money for his vote?" The Committee after argument resolved that the question might be put.

It then came out that there had been a bargaining by Lisle at M'Farlane's house for his vote; that the sum agreed on was 40*l.*, and that M'Farlane was expressly directed to go up with Mr. Macguire's tally, in order to avoid the bribery oath. This evidence was confirmed by Mr. Reid, a supporter of Mr. Macguire, who had been secreted in M'Farlane's house, for the purpose of hearing what passed. A parcel was subsequently delivered

to M'Farlane's wife by a female, according to Lisle's arrangement, which parcel having been opened in Mr. Reid's presence also, was found to contain twenty-five sovereigns. Other gross acts of bribery on the part of Lisle were also proved,* which formed the grounds of the subsequent special report of the Committee. Thompson's agency.

A Mr. James Thompson, who had been active in supporting Lord Hill, had brought a voter, called Patrick Duffy, to the tally room, and Lord Hill was himself present there at the time. It was then proposed to ask what Mr. Thompson said to Duffy at the time.

Mr. Pollock objected to this manner of attempting to fix Lord Hill with the actions and sayings of a person not proved to be his agent.

After hearing Mr. Harrison, in answer, the Committee decided that the question could not be put; and upon Mr. O'Hanlon further citing the first Dublin† and Worcester‡ cases in support of an application to receive the evidence *de bene esse*, subject to its being struck out hereafter, if the agency could not be made out, the Committee further resolved that the course proposed was inadmissible.

In a case where Lisle had been bargaining for a vote, and promised the money, Mr. Ritchie, who was present, undertook to give it himself, and the sum was afterwards paid by his wife.

Mr. Pollock objected to this evidence, but Mr. O'Hanlon contending, that this transaction having taken place in the presence of Lisle, it would, according to the authority of the Middlesex case,§ be a proper subject for inquiry, the Committee resolved that the examination might be pursued with respect to the particular transaction in question.

Evidence was also admitted of an act of bribery by Captain Seymour,‖ but here, as in the former case, appa-

* See printed Minutes, pp. 34, 35, 38.

† Minutes, 30th July, 1831.

‡ 282 Douglas, note.

§ 2 Peck. 32.

‖ See printed Minutes, 48.

rently for the purpose of furnishing ground for a special report. With regard to the allegation against the employment of Mr. Craig, as Lord Hill's agent, he at the same time having the custody of the voters' certificates, as clerk of the peace, it was attempted to prove that some voters had been delayed in voting from a want of their certificates; but it having been established, upon reference to the Irish Reform Act, 2 & 3 W. 4, c. 88, that the certificates might have been obtained by the voters at the time of registry, and that in those cases where they had not been so obtained, Mr. Craig had actually sent the certificates into Newry before the election, from his residence, which was at some distance, the Committee resolved that the examination should not be further pursued, it appearing that if any inconvenience had ensued, the blame rested rather with the electors themselves than with the clerk of the peace.

Mr. O'Hanlon then summed up generally the evidence for the petitioners, contending that a case of bribery had been made out against the sitting member.

Mr. Pollock for Lord Marcus Hill, in answer, contended, that admitting bribery to have taken place, there was no evidence to connect the sitting member with any guilty participation in those transactions. The strongest case attempted to be made out was that supported by the testimony of Catherine Havern, but that testimony the Committee could not but consider entirely devoid of credit. Then as to the payments, there was no proof at all of any disbursements by the sitting member, or of any authority given for such a purpose; the cases brought forward were altogether only eight, and for those individual acts of different members of the club he could not be held responsible, as over that body he had no controul; no such acts had been authorised by him, and however reprehensible they might be, there was nothing under the circumstances before the Committee to affect the validity of Lord Hill's return.

The Committee then resolved:—

That the Hon. Arthur Marcus Cecil Hill, commonly called Lord Arthur Marcus Cecil Hill, is duly elected a burgess to serve in this present parliament for the borough of Newry; that neither the petition of the said Dennis Maguire, nor the opposition to it, appeared to the Committee to be frivolous or vexatious. Report, March 13.

The following resolution was also communicated to the House by the chairman, Sir John Byng:

Resolved, That although it has not been proved that the sitting member was implicated by the existence of unlawful practices during the late election for the borough of Newry, it appears that a system of bribery prevailed there to a considerable extent, in which certain members of a club, called "The Union," were concerned, and the Committee wish to direct the attention of the House to the part taken in these transactions by James Lisle and others.

The minutes of evidence taken before the Committee were laid before the House on the following day, and were ordered to be printed.

CASE VIII.

BOROUGH OF HERTFORD.*

The Committee was chosen on the 7th March, 1833, and consisted of the following members.

Ralph Bernal, Esq. (Chairman,) *Rochester.*

Edward Steward, Esq. *Wigton, &c.*	Hon. Fred. Spencer, *Midhurst.*
James Ewing, Esq. *Glasgow.*	William Clay, Esq. *Tower Hamlets.*
Earl of Kerry, *Calne.*	John Walter, Esq. *Berks.*
Charles J. Kemyss Tynte, Esq. *West Somerset.*	James Whilley Deans Dundas, *Greenwich.*
Joshua Scholefield, Esq. *Birmingham.*	Richard Montesquieu Bellew, Esq. *Louth.*

Petitioners—Thomas Slingsby Duncombe, John Eden Spalding, Esqrs.

Sitting Members—Lord Viscount Ingestre, Lord Viscount Mahon.

Counsel for the Petitioners—Mr. Joy, Mr. Rogers, Mr. Wood.

Agent—Mr. J. P. Beavan.

For the Sitting Members—Mr. Harrison, Mr. Follett, Hon. — Talbot.†

Agent—Mr. Sherwood.

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* This case was one of a very complicated character, embracing numerous legal questions, and comprising an infinite number of detached facts, upon which a voluminous mass of conflicting evidence was adduced before the Committee. As the resolution of the Committee merely declared the election void in general terms, it is impossible to ascertain with certainty upon what facts, or what particular legal grounds, their determination proceeded, and it may be therefore difficult to extract any general principle or rule from the decision in this case. Nevertheless, as the case excited great interest, and several of the most important questions in the law of bribery and treating were very fully gone into, and the authorities elaborately discussed in the course of the arguments, it has been thought expedient to give a full report of the case.

† In the progress of the case Mr. Talbot having left town for the circuit, Mr. Serjt. Heath appeared as counsel in the absence of Mr. Follett.

The Petition stated, that at the last election for the borough of Hertford, the Honourable Henry John Chetwynd Talbot, commonly called Lord Viscount Ingestre, and the Honourable Philip Henry Stanhope, commonly called Lord Viscount Mahon, and the petitioners, were candidates. It charged, that the sitting members, by themselves and their agents, had been guilty of bribery and treating, and that their return had been procured by gross bribery and corruption, intimidation, and unconstitutional interference, and by a system of corrupt and illegal practices, commenced long before and continued down to and during the election. It then went on to state that the Marquess of Salisbury, being a Peer of Parliament, in defiance of the resolutions of the House, and the liberties and privileges of the Commons of the United Kingdom, illegally and unconstitutionally interfered at such election, and by himself and others, by influence, intimidation, promises, and threats, induced persons being his tenants, or otherwise dependent on him, to vote for the sitting members, or to abstain from voting, who otherwise would have voted for the petitioners; and that, more openly to proclaim that the sitting members were candidates in his interest, he publicly rode through the town of Hertford, displaying the colours of the said candidates, at the head of a tumultuous assemblage of persons, many of whom were voters in their interest. The petition then alleged, that by reason of the several matters so charged the sitting members were incapacitated to serve in parliament, and prayed the House to declare the return void, and to make such further order for securing the freedom of election in the borough of Hertford, as to the House might seem meet.

Petition.*

Bribery and treating.

Interference of a Peer.

Prayer.

It appeared that at the election of 1831, Lord Ingestre, the present sitting member, was defeated by Mr. Duncombe, the petitioner, and Mr. Currie, a gentleman who united his interest with that of Mr. Duncombe. In the spring of 1832 several clubs were formed by voters who had espoused the party of Lord Ingestre, for the

Case of the Petitioners.

* 8 Feb. 1833, Appendix to Votes, p. 19.

purpose of supporting his interest in the borough. In the month of June Lord Ingestre announced himself as a candidate at the ensuing election, and was afterwards followed by Lord Mahon. In the month of August the two Lords made a public entry into the town of Hertford, and commenced their canvass. They canvassed together, and acted in all respects conjointly.

Shortly after the entry of the Lords, Mr. Nicholson, who with his partner, Mr. Longmore, had been the principal agents of Lord Ingestre at the former election, (they being also the private solicitors of the Marquess of Salisbury,) having become acquainted with the existence of the clubs before mentioned, took them under his protection, and defrayed the expense of their meetings. After the public entry of the Lords into the town, the clubs were, at the desire of Lord Ingestre, consolidated into one, and from that time their meetings were held once a fortnight at a place called Rat's Castle, which had been previously a corn warehouse belonging to a Mr. Edward Lawrence. These meetings were usually attended by between three and four hundred voters, to whom bread, cheese, and beer were allowed, at the expense of the sitting members. The clubs so consolidated were placed under the management of a person named Dack. This person, at the commencement of this system, converted his house into a beer shop, calling it by the sign of the Talbot Arms. He however discontinued the business immediately after the election. Under Dack fifteen persons acted, who were called stewards, and were generally known by the name of "Dack's Committee." These persons also held meetings once a week, at Dack's house, where suppers, &c. were provided for them, free of all expense.

On the occasion of the public entry of the Lords, Dack, acting by the authority of Mr. Nicholson, the agent, issued tickets to those voters who accompanied the Lords into the town. Some of these tickets were of the value of 2*s*. 6*d*., some of 5*s*., and some which were

called double tickets, consisted of two of the former joined together.* These tickets were distributed to the voters generally, without being particularly confined to the voters in the interest of the sitting members. Tickets of the same kind were afterwards distributed on other occasions, some as late as within three or four days of the teste of the writ. They were signed "S. Dack," and bore the words "for refreshment." They circulated in the town among the tradespeople, goods being given for them at all the shops, and change delivered when the goods bought did not amount to the full value of the ticket. They circulated in all respects as a species of paper money, not only as between the voters and the tradespeople, but between the tradespeople in their dealings with one another. A witness, the wife of a voter, stated, that having received a 5*s*. ticket on the 30th November, she took it to Dack's to obtain money for it; that Dack, however, refused to give money, but desired her to take it to a shop, saying, "that the tickets were given for the good of the tradespeople of the town." It was in evidence also, that a linen draper named Pollard, having been offered several of these tickets, sent his apprentice to Dack to know whether he might take them, and whether Dack would pay for them; upon which the latter answered that he would pay for as many as might be taken. Dack also on one occasion sent his servant round to all the shops, to ask if the tradesmen had tickets, and to say that if they would send them to his house they should receive the money.† The tickets circulated up to the close of the election. After the election they were paid by Dack, with money furnished him by Nicholson. It was proved also that the rates of

* There were also other tickets, called Women's Tickets, entitling the bearers to flour. It was afterwards stated by Mr. Nicholson, in his evidence, that all the tickets together amounted to about 300*l*.

† The circulation of the tickets, and the authority given by Dack to the tradesmen to take them, had evidently great weight with the Committee, and they particularly directed the attention of the counsel of the sitting members to the subject, during the course of their arguments.

several voters had been paid by Dack, in order to enable them to get their votes registered.

Besides the distribution of tickets and the payment of rates, the petitioners proceeded to give evidence of a series of acts of bribery, committed by the sitting members, or persons alleged to have been their agents. By way of laying a general foundation for their case, they gave evidence of the language used by the canvassers of the sitting members respecting the pecuniary means of their party, as, for instance, that "theirs was the side to vote for, as they had plenty of money;" that "it was of no use to vote for Duncombe, as he had no money," and similar expressions; and one witness stated that Lord Ingestre, on soliciting him to vote for Lord Mahon, observed that he (Lord Mahon) "had the longest purse." A witness named Russell Davis, who at the former election had been a warm supporter of Mr. Duncombe, deposed, that having been sent for to Mr. Nicholson's, and there solicited to give his vote for Lord Mahon, he replied, that "having received considerable injury from their bullies and gypsies, if he did vote for Lord M. he should expect a handsome present;" that he was then asked by Lord Mahon what he wanted, and having answered 10*l.*, Lord Mahon replied that he should have it; but that not succeeding in obtaining the money immediately, he afterwards repented of his bargain, and voted for the petitioners. This was, however, the only instance in which an act of bribery was stated to have been actually committed by either of the sitting members; in all other instances the acts were done by persons who were alleged to have been their agents. Of these the principal were Messrs. Nicholson and Longmore; Dack, of whom mention has already been made, and two others, named Twaddle and Edward Lawrence.* The agency of Nicholson and Longmore was not denied, but concerning that of the others considerable discussion took

* There were some others who it was contended were also agents, but those mentioned were the principal, and it has not been thought necessary to enter into the other cases.

place, which will be noticed hereafter. The acts of bribery consisted, for the most part, in gifts or promises of money, or of articles of clothing. In one instance 13*l.* were stated to have been offered by Twaddle to a voter, if he would vote for both the sitting members; and in another, a bill of 4*l.* was stated to have been discharged as the consideration of the vote.* The sums of money given were, however, for the most part small; nor did there appear to have been any systematic purchasing of votes at a fixed price, as has been sometimes proved to have existed on occasions of this sort. In several cases the promise or offer had not been acted upon by the voter; a circumstance to which it is necessary to advert, as it was made the ground of an important distinction in argument.

It was further proved that there existed in the borough of Hertford, a practice of giving to every voter, after the election, what was called vote-money, amounting to 10*s.* for a single vote, and 1*l.* for a plumper; that this vote-money was paid by the losing, as well as by the successful candidate, so that every voter, for whomsoever he might vote, by this means obtained a pound. It was not denied that the money was expected on the present occasion, and that, though not as yet given, it would eventually be paid. Vote-money.

Upon the charge of treating, the petitioners adduced the following evidence. It appeared that treating to a considerable extent had prevailed after the teste of the writ. Numerous public houses were thrown open, at Evidence of treating.

* The following circumstance was strongly insisted on as an ingenious but obvious contrivance to disguise an act of bribery. The house of a voter named Mead had been robbed before Michaelmas of seven sovereigns. A petition had been drawn up by the voter's son, but it was never handed about, nor was anything received upon it. Before the election, the wife of the voter being sent for by Dack, a petition was put into her hand, purporting to be the petition of her husband, stating his loss, and appealing to the charitable and humane. At the foot of the petition the names of Dack, Twaddle, Lawrence, and four other of the active partizans of the sitting members, were subscribed for one pound each, and the seven pounds were handed over to the woman at the same time with the petition. The petition was not the same which the voter's son had drawn up, and was stated to be in Dack's hand-writing.

which the voters in the interest of the sitting members had refreshment, as they thought proper. The meetings of Dack's committee continued to be held at his house, and the members were provided with suppers free of expense; voters also were treated there during the week of the election. Ten publicans being called before the Committee, deposed that their houses had been open to the voters during the canvassing and election weeks. But it did not appear that any of them had received orders to supply refreshment to the voters from the sitting members or their acknowledged agents; and three out of the number stated that they applied to Mr. Nicholson to know if they might open their houses, and that Nicholson had refused to give any orders, saying, that if they did so it must be on their own account, as he would not pay them.* All, however, admitted that they had opened their houses in the expectation of being paid by the friends of the sitting members. In some instances it appeared that persons, called agents, had been sent to the public houses to superintend the delivery of the refreshments and to check the accounts, and that they drew the beer and liquors, the ordinary servants being prohibited from so doing. It did not however appear by whom those persons were sent, or by whose authority they acted. It further appeared, that two or three publicans had delivered their bills to Nicholson, and that the latter did not return them, but, on the contrary, in one instance, desired the party to get the bill signed, which a person named Tisoe, who had been very active in the election, offered to get done, as also to deliver the bill to Nicholson; and that on the publican afterwards, on the 30th January, asking Nicholson when the bill might be expected to be paid, he replied in about fourteen or sixteen days. One Farrow, likewise, whose house had been

* It appeared, however, that in two or three instances the houses had been opened by the directions of persons who were active partizans of the sitting members, and who where amongst those referred to in the note to page 188, as having been stated by the counsel for the petitioners to be agents.

opened by Nicholson for the strangers who were introduced into the town, admitted that he had received voters during the election. His account, which, from the 18th to the 29th November, amounted to 96*l.*, increased during the three days of the election to 177*l.* 9*s.*; on its being delivered to Nicholson, the latter made no objection to the amount. One landlord, whose bill amounted to upwards of 490*l.*, though he had made out the account to no person in particular, had marked the items of the bill with the names of persons belonging to the party of the sitting members, who happened to be present when the articles were delivered. Among these were the names of Longmore, Twaddle, and Edward Lawrence. Evidence was also given to show that the sitting members, and their agents, had on many occasions gone into the public houses while voters were there eating and drinking, and also that some of the agents had themselves treated voters during the election, and had authorized others to go to houses to procure refreshment, in the presence and hearing of the sitting members.

It also appeared in evidence, that the sum of 2000*l.* had been paid to Mr. Nicholson by Lord Mahon, on the 16th Jan. 1833.

Interference of the Marquess of Salisbury.

To establish the interference of the Marquess of Salisbury, several voters were called, who stated, that having been tenants of the Marquess, and having voted for Duncombe and Currie at the election of 1831, they had received notice to quit, but having become members of the Union, and promised to vote for Lords Ingestre and Mahon, they were reinstated in their houses. It appeared also that the Marquess, who had upwards of 200 houses in the town, had adopted a system of granting leases from week to week, determinable on fourteen days' notice, with an agreement, on the part of the tenant, to pay 50*l.* liquidated damages, in the event of his offering any impediment to the re-entry of the Marquess into the premises upon the notice before mentioned. Evidence was also produced that the Marquess on the 16th Nov. rode through the town, escorted by a large party in the inter-

est of the sitting members, with the colours of the candidates tied to his horse's head, and preceded by their flag and band. It also appeared that a number of strangers, for the most part labouring men, were conveyed to Hertford on the nomination day, in two waggons, having Lord Salisbury's name on them, and accompanied by persons in his employment; that these persons assisted in fighting and defeating the mob in the interest of the opposite party; that they were paid by a Mr. Mardel, a steward of the Marquess; and that after the election, these persons, on going back to Hatfield, marched, headed by a band, round the house of the Marquess, and received refreshment there.

Defence of the sitting members.

The defence which the counsel for the sitting members opposed to the case of the petitioners was as follows:—They contended that the distribution of the refreshment tickets and vote-money was not illegal; and that the treating had not been sufficiently connected with the sitting members. They denied the fact of the promise which the sitting member, Lord Mahon, was stated to have made to the voter Russell Davis, and they called Mr. Nicholson as a witness, to disprove that any such conversation as that deposed to by Davis ever did take place, as well as to contradict that witness on some collateral facts. With respect to the gifts and promises stated to have been made by Messrs. Nicholson and Longmore, those gentlemen, being called as witnesses, denied that any such had taken place, with the exception of some small sums, which they stated to have been given either from motives of charity, or in accordance with a custom, long prevalent in the town of Hertford, of giving small sums to the voters about the time of an election, which was said to be done not for the purpose of procuring the particular vote, but of keeping up a certain general influence with the voters; and they denied that these gifts had been accompanied by any stipulation respecting the vote of the parties who received them. With respect to the acts of bribery done by the other persons who have been mentioned, the defence of

the sitting members was two-fold;—1stly, That the evidence as to those acts was not such as could be relied on; 2dly, That the parties were not agents, so as to affect the sitting members by their acts. With respect to the illegal interference of the Marquess of Salisbury, it was denied that in point of fact any such interference had taken place. Evidence was given to show that the procession through the town was wholly unpremeditated, and was merely a mark of respect offered to the Marquess by some of the inhabitants, in consequence of an attack having been made by the mob of the other party on the carriage of the Marchioness of Salisbury. But it was contended, that at all events, even if such illegal interference had taken place, the sitting members not being parties to that interference, could not be affected by it.*

Evidence as to agency.

As the agency of the parties by whom the acts of bribery were alleged to have been committed, formed a material feature in the discussions in this case, it becomes necessary to advert to what was the state of the evidence on this head. As has already been mentioned, it was not denied that Messrs. Nicholson and Longmore were the authorized general agents of the sitting members. With respect to the other persons who have been mentioned, it appeared that all had been zealous and active partisans of the sitting members; that Dack, as has before been stated, was placed at the head of the clubs, and issued the tickets by the authority of Nicholson; and that at a

* In support of this position, the case of Helston was relied on. There the sitting members took down a letter of recommendation from the Duke of Leeds; they were present when the letter was read in a committee consisting of nine or ten voters of the borough of Helston, and they were adopted as the candidates in the interest of the Duke. Acts of interference were proved on the part of the Duke, but these acts were not brought home to the knowledge of the sitting members. The Committee made a special report against the Duke of Leeds, but declared the sitting members duly elected. See Minutes of Evidence, 1813.

In the present case the subject of interference was not strongly insisted on by the counsel for the petitioners, nor did it form a leading feature in the arguments, and no mention of it was made by the Committee in their report; further notice of this part of the case will therefore be omitted.

dinner given by the sitting members at Rat's Castle, on 27th November, the health of Dack and his committee was proposed and drunk in their presence. It was stated that Twaddle had been engaged in superintending the bringing up of voters to the poll; and one voter, named Bunyan, deposed that he received an order from Nicholson on Twaddle for shoes,* which he received accordingly. As regards Lawrence, it was proved that a committee of five persons having been chosen by ballot from among the friends of the sitting members, at the express desire of the latter, to conduct the canvass and manage the general arrangements of the election, Lawrence was one of these; that on a demand being made on Nicholson for bell-ringing, (which the sitting members were bound to pay,) Nicholson referred the party to Lawrence. Both Twaddle and Lawrence had canvassed with the sitting members, and evidence was adduced to show that the former had on one occasion been purposely left by the sitting members to complete a corrupt contract with a voter; but upon this point contradictory evidence was offered by the other side. It appeared also that Dack had received from Nicholson by cheques for small sums, at different times, no less a sum than 1,300*l.*†

On the part of the sitting members, Messrs. Nicholson and Longmore deposed that they, together with two gentlemen named Sworder and Spence, were the only authorized agents of the sitting members, and that besides themselves no one had authority to incur any expenses whatever; that the authority of Dack was confined to the distribution of the tickets and the management of the clubs, and that the latter having been closed on the 27th November, his authority was then put an end to; that the committee of five were limited to that number at the

* Twaddle was a slopseller, and by him the articles of clothing were distributed to the voters.

† Twaddle and Lawrence also appeared by the banker's books to have received money from Nicholson, but the latter stated that this was on account of private matters, not connected with the election. It was also stated that the money paid to Dack was on account of the tickets and expenses incurred previously to the teste of the writ.

desire of the sitting members, for the express purpose of preventing any irregularities after the teste of the writ, and were prohibited by the sitting members from incurring any expense. Nicholson also denied having given any order on Twaddle for shoes, as stated by the witness Bunyau.

The foregoing statement affords a succinct outline of this very complicated case.* As may easily be supposed, a considerable part of the arguments of counsel turned upon disputed facts and the value of their respective evidence. Such arguments will be, for obvious reasons, here omitted, and a statement of those only will be given which involve questions of law as well as fact. These may be enumerated under the following heads;—1st, the agency of Dack and the others; 2dly, the effect of mere offers of bribes; 3dly, the distribution of the refreshment tickets; 4thly, the payment of the vote money; 5thly, the treating. Upon these points the arguments were as follow.—

Arguments for the petitioners.

The counsel for the petitioners.—The agency of Messrs. Nicholson and Longmore is not denied, and their acts alone would be sufficient to avoid the election; but the agency of Dack and the others, though denied by the sitting members, has been abundantly established. It is clear that all were employed for the purposes of the election. Dack was specially appointed to manage the clubs and distribute the tickets; Lawrence was a member of a limited committee, appointed under the immediate directions of the sitting members; Twaddle was the constant companion of their canvass, and superintended the bringing up of voters;—all were actively mixed up with all the transactions and circumstances of this election, from the beginning to the end. At all events these persons were acting as the agents of the sitting members; and the sitting members, constantly present in the midst of this widely-extended system of corruption, cannot have been otherwise than cognizant of what these parties were doing in their behalf. If so, not having re-

Agency.

* Some idea of the extent of this case may be formed from the fact of the Committee having sat during twenty-one days.

pudiated their acts, but on the contrary having benefited by them, they cannot now escape from the consequences. In the Liverpool case,* though the agency of the parties who committed the acts of bribery was not proved, yet the knowledge that the bribery had been going on having been brought home to the sitting member, Mr. Ewart, the election was set aside. If circumstances sufficient to raise a belief as to the liability of an individual notoriously exist, and the latter benefits by the belief, and avails himself of those circumstances, he will be affected with that liability. Thus in a case† where, a gentleman having lost some horses, a hand-bill was put up and generally circulated, offering a reward for the recovery, a person having enabled him to recover them, applied for the reward, but was refused. An action being brought, it was not proved that the defendant had authorized the circulation of the hand-bills; but it was held that the publicity of the bills, and their general circulation, was sufficient to charge him with having been privy to them, and the plaintiff recovered. In the case of Honeywood *v.* Sir William Geary,‡ an agreement had been made between the committee of Mr. H. and the committee of Sir W. G., (both being candidates at an election,) that Sir W. G. should have the benefit of the second votes of Mr. H., on condition of paying a certain proportion of the expenses of bringing up voters. Sir W. G. accordingly had the benefit of the second votes, but refused to pay his share of the expenses on the ground that he had not been privy to the contract. But it was held that he was bound by the agreement of his committee. Lord C. J. Mansfield observed, that "it had been proved that the committee had full authority to act for Sir W. G.; that they ordered chaises, and gave general orders respecting the election, which Sir W. G. adopted and had the benefit of—qui sentit commodum, sentire debet et onus—he should therefore hold Sir W. G. bound

* Minutes, 1831.

† Anon. cited by Lord Kenyon in Renquist *v.* Ditchell, 3 Esp. 65.

‡ 6 Esp. 119.

by an agreement so made." If a party does that which is sufficient to lead to the inference that another is his agent, he will be bound by the acts of that agent. Thus in Pickering *v.* Busk,* where a purchaser of hemp lying in wharfs in London, had, at the time of his purchase, the hemp transferred in the wharfinger's books into the name of the broker who effected the purchase for him, and whose business it was to buy and sell hemp, it was held that this was sufficient to give the broker an implied authority to sell it, and that his sale and receipt of the money bound his unknown principal. A single act of dealing has been held sufficient to establish a general agency. In the case of Hazard *v.* Treadwell† a party had sent another to a dealer in iron for iron on trust, and paid for it afterwards; he sent the same man for iron a second time with ready money; the man took the iron, but instead of paying for it kept the money: it was held that the principal was liable.

But it may be said that these persons had only a limited authority, and were not agents for the purpose of bribery. It is enough that they were employed by the sitting members for the purposes of the election, and were thereby held out to the world as agents. If a party hold out another to the world as a general agent in a given capacity, and then wishes to introduce a limitation into the general agency, he must give notice of that limitation. Such is the doctrine of law with respect to agency. Mr. Justice Bayley, in his judgment in Pickering *v.* Busk,‡ lays it down as law, that "if the servant of a horse-dealer, with express directions not to warrant, do warrant, the master will be bound, because the servant having general authority to sell is in a condition to warrant, and the master has not notified to the world that the general authority is circumscribed." The case of Neal *v.* Irving § is an important authority on this subject. That was an action upon a policy of insurance. The policy was subscribed by one Hutchins, of whose authority no

* 15 East, 45.
† 1 Strange, 506.
‡ 15 East, 45.
§ 1 Esp. 61.

proof was given beyond the fact that he was in the habit of subscribing policies for the defendant. This evidence was objected to on the part of the defendant, on the ground that Hutchins must have acted by a power of attorney from the defendant, which might have been limited, or for a particular purpose; for which reason it ought to have been shown that Hutchins was properly authorized by producing the power of attorney. But Lord Kenyon overruled the objection, and held that the acts of Hutchins held him out to the world as properly authorized, and that his having subscribed several policies in the defendant's name was sufficient evidence of that authority in order to charge the defendant. It results, therefore, that if a party knows that another is acting as his agent, and the fact of his so acting is matter of notoriety, the effect is, that the one is held out to the world by the other as his agent; and this brings the case within the principle before laid down, namely, that if the principal wishes to limit the agency he must give notice of that intention.

These are the common law authorities respecting agency in general: there are many cases which show that a candidate will be bound in matters relating to the election by the acts of his agent. The principal case is that of Felton *v.* Easthope.* There Lord Tenterden laid it down, that though in order to affect the candidate penally, bribery, if committed by an agent, must be committed by the authority of the candidate, yet that bribery by an agent would avoid the election, whether done with, or without, the knowledge of the principal. In the case of Ridler *v.* Moore and Francis,† the defendants, who had been candidates at an election, were held to be liable for expenses incurred by individual members of their committee, without their privity or sanction, or that of the other members of the committee. The committee had been appointed to regulate the business of the election. It was formed by a Mr. Smith, who had headed the procession which escorted the candidates into Tewkesbury,

* Rog. Elect. 220. † Clifford's Cases, p. 371.

had canvassed with them, had given directions respecting the bringing up of infirm voters to the poll, had paid some of the bills incurred, and had been consulted by the committee on all matters, and was considered as their head. Lord Kenyon held, that the committee were collectively and individually agents, and that the candidates were bound by their acts. The observations of the learned reporter on this case are particularly worthy of attention. He remarks, that "according to this decision the acting in such manner as to induce the electors to believe a party an agent, is proof of agency, sufficient at least to call upon the candidate to disprove it." He then goes on to say—"There is much sound sense as well as law in this decision. Ill indeed must an election have been conducted where any direct proof of agency can be procured. Indirect proof must, therefore, of necessity be resorted to. It will be highly beneficial to the country, it will conduce much to the freedom and quiet of elections, if future committees shall conform to this wise decision, and shall model their determinations by it. It is their duty to do so. To establish the fact of agency, stronger proof ought not to be required by committees than is sufficient in a court of law; committees are sworn to determine according to the law. Unless committees are strict on this head, the wholesome laws against expense and treating at elections will continue to be constantly evaded, and will remain, as they have heretofore done, a dead letter, incumbering the statute-book." These remarks are peculiarly applicable to the present case. Here the system carried on was open and notorious. The acts of these parties were sufficient to hold them out to the electors as the agents of the sitting members; the general notoriety attending them can leave no doubt as to the cognizance of the latter; therefore as they did not repudiate the agency, they must be taken to have acknowledged it.

The agency of these parties being established, the next point for consideration will be the acts of bribery committed. Numerous cases of direct bribery have

Offers of bribes.

been proved. But it is true that in some instances the bribe has not been actually received, the transaction having stopped short with the mere offer or promise of a bribe, which has not been accepted or not acted upon by the voter. This, however, is immaterial; for where a bribe is offered, the offence is, in point of law, as complete in the party who offers it, as though the bribe were actually given and accepted. The law is so laid down by Lord Mansfield in the case of Rex v. Vaughan :* and it is immaterial, if bribery has taken place, whether the voter has been influenced by it in giving his vote or not. In Sulston v. Norton,† which was an action for a penalty on account of bribery, it appeared that one Moore had received five guineas from the defendant, to vote for Lord Villiers and Sir Robert Burdett: he, however, voted for their opponents. It was objected that as the defendant had not induced the party bribed to vote, he had not committed the offence. But Lord Mansfield lays it down, that the offence is equally committed, whether the party bribed votes in consequence of the bribe, or not.‡

Besides the individual acts of bribery which have been proved, a general system of corruption has been shown to have been practised; firstly, in the distribution of the refreshment tickets; secondly, in the gift of the vote-money.

Refreshment tickets.

The issuing of the refreshment tickets was held in the Berwick case§ to be fatal to the election. It is unquestionably bribery under a disguised form. It is the same thing as though so much money had been given. It is true that in this case the tickets bore on them the words "for refreshment;" but this was done only as a blind. Dack stated that they were given for the good of the tradespeople of Hertford, and he authorized the tradespeople to receive them. They circulated as money, and the distribution of them must therefore be considered as in all respects equivalent to the gift of money to an equal amount. There can be no doubt that they were issued

* 4 Burr. 2500. † 3 Burr. 1236.

‡ See also on this subject Coombe v. Pitt, Burr. 1586; Rex v. Plympton, 2 Lord Raym. 1377; Lilley v. Carrie, 1 Selw. N. P. 650, n.; 2 Hawk. c. 67, s. 10; 2 Doug. 414, 415. § 1 Peck. 401.

with a view to influence the voters, and to promote the interest of the sitting members. It is equally clear that the effect of the vote-money is, in like manner, to exercise an undue influence over the electors; and though that money has not yet been given, it is admitted that it eventually will be given, and that it was fully understood at the time of voting that it would be paid after the election. If so, it was as much bribery as though the money had actually been paid at the time of polling. Vote-money.

The subject of treating, as proved in this case, divides itself into two parts; firstly, the treating which took place previously to, and secondly, that which took place after the teste of the writ. It has been proved that an extensive system of treating was practised for months before the election; and it must be obvious upon the evidence that the object of this system was to corrupt the voters. Therefore this treating, though not in itself specifically illegal, inasmuch as it occurred before the teste of the writ—assumes the character and carries with it the consequences of bribery. Before the passing of the treating act,* all treating, whether before or after the teste of the writ, if used for the purpose of procuring the return, was considered to be a species of bribery. The effect of the treating act was to enact that any treating of voters whatsoever, whether for the purpose of corruption or not, if occurring after the teste of the writ, should avoid the election. The object of that statute was to strengthen, not to abridge the operation of the law. It took away from Committees, where treating occurs after the teste of the writ, that discretion which was before vested in them, of determining on its effect, according to their judgment as to the motives in which it originated, leaving them no alternative but to avoid the election on the treating being proved; but it still left it open to them to deal with treating, though anterior to the teste of the writ, as a species of bribery, where it has been practised for the purposes of corruption. But besides this, most extensive treating has been proved to have taken place after the teste of the writ; and this Treating.

* 7 & 8 Wm. 3, c. 4.

treating has been sufficiently connected with the sitting members. It is true no specific orders have been proved to have been given by the members themselves; and it is even stated that Mr. Nicholson refused to give orders on the subject. But it is evident that this language was but adopted for the sake of external appearances and with a view to future consequences; for on the bills of some of the publicans being taken to him, he did not repudiate them, and in one instance even named a time for payment. Some of the houses were opened by the order of the active partisans and minor agents of the sitting members. The sitting members themselves have been proved to have gone on repeated occasions into the public-houses while the treating was going on; and individual voters are proved to have been treated by the agents of the sitting members, in some instances even in their presence. There can be no doubt therefore that a perfect understanding subsisted between the publicans and the sitting members, and that the treating was carried on with their sanction and authority. Upon all these grounds the Committee are now called upon to declare the election void.

Argument for the sitting members.

The counsel for the sitting members, after contending that the particular acts of bribery alleged to have been committed by the sitting members and their acknowledged agents, had been disproved in evidence, argued on the other points as follows:—

Agency.

It is a well-established principle that a candidate cannot be implicated in the consequences of bribery except by his own acts, or those of his authorized agent. The legislature has itself defined the offence of bribery. In the statute 2 Geo. 2, c. 24, it is enacted, that "if any person by himself, or any other person employed by him, doth or shall, by any gift or reward, or by any promise, agreement, or security for any gift or reward, corrupt or procure any person or persons to give his or their vote or votes, or to forbear to give his or their vote or votes, in any such election," such person shall be subject to the penalties imposed by that statute. A party can therefore only be implicated by acts of bribery committed "by

himself or any person employed by him." This definition has been invariably adopted by Committees of the House of Commons. Even in cases where the most profligate bribery has been proved, Committees have refused to unseat the members, if the bribery was not brought home to them. In the case of Ilchester* the sum of £30 apiece was distributed to the voters by a hand from a window in the house of a Mr. Lockyer; at the same time a pauper and an exciseman were refused as having no votes; voters in London received £30 apiece, in letters from an agent of Lockyer. It was proved that Lockyer had acted and canvassed for the sitting members, and that they had stood on his interest. But the Committee decided in favour of the sitting members. So, in a later case of Ilchester,† evidence was given that a plan had been laid to corrupt the borough, and that a stranger, sent down in conformity with this plan, had distributed £30 apiece to the voters. Yet because the acts of bribery were not brought home to the sitting members, the Committee determined that they had not been guilty of bribery. In the Chester case‡ 4000 refreshment tickets were distributed, some of which had been lying about in the committee room while the sitting members were present; but because the agency of the party who issued them was not proved, the sitting members retained their seats. The same principle was acted on in the Liverpool case.§ In that case there was a charge of bribery and treating against the sitting members, Mr. Canning and General Gascoyne. It being acknowledged that Mr. Canning had not been shown to have been a party to any payment, his counsel were not even called upon for a defence; but as it appeared that General Gascoyne, on some person observing to him that "Lord Sefton's ale bills were paid every morning," had replied that "his were paid also," it was contended that this was an admission that he paid those bills. But

* 1 Lud. 465.
† 1 Peck. 304.
‡ C. & D. 68.
§ Minutes of Evidence, 1813.

the chairman of his committee being called, stated that the bills were paid by the friends of the General, and that he never had, and never would pay a farthing; upon which the Committee declared both members duly elected.

Agency must be strictly proved.

Not only must the bribery have been committed by the candidate or his agent, but where the bribery has been committed by an alleged agent, Committees have required that the agency should be strictly proved. In the case of Mitchell* it was proved that one Curgenven canvassed the town in company with Mr. Hawkins, the sitting member; that he went about alone to ask for votes for Mr. H.; that he asked for one vote in the presence of Mr. H.; that he was the steward of Lord Falmouth, on whose interest Mr. H. stood; and that he and Mr. H. lived during the election in the house of an agent of Lord Falmouth. After this evidence, the Committee refused to receive proof of acts done by Curgenven, on the ground that the agency had not been sufficiently proved. So, in the Cirencester case,† a person named Pytt was shown to have canvassed with the sitting member, and also to have been a member of his committee; but it was held that this was not sufficient proof of agency to let in evidence of the acts of Pytt, to affect the sitting members. And the rule that agency must be distinctly proved before the acts done can be suffered to affect the candidate, is one founded in sound sense and justice; for if this were not so, as a single act of bribery is sufficient to avoid an election, it would be in the power of a disguised enemy, as well as of an indiscreet friend, to vacate a seat which had been obtained by the fairest and most honourable means. The cases cited by the other side do not in any way go to show that strict proof of agency can be dispensed with. In the case of Honeywood *v.* Sir Wm. Geary, and that of Ridler *v.* Moore, there were special circumstances, which necessarily led to the conclusion that the committee were the general agents of the candidates. But it is said that the know-

* 1 Lud. 83. † 1 Peck. 466.

ledge of the sitting members of the course these parties were pursuing, must make the former responsible for their acts. There is no proof of any such knowledge. The Liverpool case* stands on very different grounds. There, knowledge of the bribery was actually brought home to the sitting member. In that case bribery had been practised to an unparalleled extent. A voter being canvassed by Mr. Ewart, the sitting member, refused his vote, on the ground of the system of bribery carried on by Mr. E.'s party. The warning was again repeated on the hustings, when Mr. Ewart replied that "he could not help it," that "the same thing was done on the other side," and that "no election could be carried on without it." By these expressions his knowledge of the extensive bribery which was going on was made manifest, and on that ground he lost his seat. The anonymous case, cited in Renquist *v.* Ditchell,† is not in point, for in that case there was no question as to agency. It may be laid down, therefore, as incontrovertible position, that the authority of the parties by whom acts of bribery are alleged to have been committed, must be clearly established before a sitting member can be affected by their acts. It is true that in the cases cited on the other side, where bribery has been committed by persons entrusted by the sitting member with the general controul of the election and disposal of his money, though proof of a specific authority to commit the illegal acts has been wanting, Committees have set aside the election. But such a case must be very clear and strong. It must be of such a description as to lead to the inference that the candidate was himself a party to the acts done. Thus if an agent has the disposal of the money of a candidate, and the general management of the election, and commits bribery, the candidate may be considered to be implicated in the illegal acts. But, even admitting the authority of the case of Felton *v.* Easthope,‡ this is the utmost extent to which the liability of the principal can be car-

* 1831, cited *ante*, p. 195. † *Ante*, p. 196. ‡ Cited *ante*, p. 198.

ried. It cannot be maintained that a person employed in a subordinate capacity, can be considered to have sufficient authority to implicate the candidate in any act of bribery he may commit. The case of Fenn *v.* Harrison* is an authority to show that a limited agent cannot make his principal liable by acts done beyond the scope of his authority. The authority of the decisions of the courts of law referred to by the other side will not be disputed, but they are not applicable here. Certainly there are cases where, if persons who have been invested with authority to act as agents for a particular purpose exceed that authority, the principals will be bound by their acts; but that is where the conduct of the principal has been such, as to raise in the mind of others the presumption of an unlimited agency, and the agent has been thereby enabled to impose on third parties. That is the utmost length to which the cases cited go; but where a limited authority only has been given, and the interests of third parties are not involved, and the conduct of the principal has not been such as to lead to a reasonable presumption of an unlimited agency, the principal cannot be affected by acts of the agent, which are not within the scope of his authority. At all events it may be laid down as a clear proposition of law, that a party giving authority to an agent for a legal purpose, cannot be prejudiced by any illegal acts of such agent. If the authority proved be within the scope of the law, the law will not presume that an authority has been given to break the law. Upon this principle, in Harding *v.* Greening,† it was held that if a party give another a general authority to write letters for him, and the agent write a libellous letter, the principal will not be responsible. Parliamentary authorities are equally strong.‡ In the Middlesex case§ there was a charge against the sheriffs of partiality in the discharge of their duty. It was attempted to give in evidence what had been said by the

* 3 T. R. 757.
† 1 B. Moore, 477.
‡ See 2 Rogers, p. 274.
§ 2 Peck. 34.

under-sheriff in the absence of the sheriffs. It was contended that the returning officer was bound to be present either in person or by deputy, and that if present by deputy only, he was answerable for what was said or done by such deputy. On the other hand it was admitted, that whatever the under-sheriff might have said or done in the absence of the sheriffs, within the scope of his particular duties with regard to the election and the admission or rejection of voters, would be evidence against the sheriffs; but it was contended that what did not come within the sphere of their particular authority, could not be received in evidence. And the Committee rejected the evidence. In the Durham case,* it was proved that a person named Brand, who was one of the sitting member's committee, had been employed by him to pay for the subsistence of the non-resident voters; evidence was then tendered of offers which Brand had given respecting the employment of certain resident voters, in the interest of the sitting member, as runners. The evidence was objected to on the ground that a particular authority did not let in proof of acts not within the scope of that authority, and the Committee desired the petitioner to give further proof of the general agency.

Now if the principles established by these authorities be applied to the present case, there is an end to the question of agency. The fact that Twaddle was an active and zealous partizan of the sitting members, and canvassed with them, will not constitute him an agent, and it would be preposterous to say that the having been employed to bring up voters to the poll amounts to an authority to commit bribery. All that has been shown with respect to Lawrence is, that he was a member of a committee of five, appointed only to superintend the canvass and the bringing up of voters, and especially prohibited from incurring any expense. The agency of Dack was confined to the management of the clubs and issuing of the tickets, and it was put an end to on the 27th November. As regards all three, it is clear that, if agents at all, they were

* 2 Peck. 185.

agents for a limited purpose only, not having any general authority extending over other matters connected with the election, which would make the sitting members liable for their acts. But even assuming that a primâ facie case of agency had been established by the evidence of the petitioners, the fact has been distinctly negatived by the evidence of the sitting members. In the Taunton case,* a primâ facie case of agency had been established as to certain parties, but the acknowledged agents of the sitting members having been called, negatived the agency, and the sitting member retained his seat. In the Penryn case† gross bribery was proved to have existed; a primâ facie case of agency was established as to a person of the name of Sowell, who had had the management of the election for the sitting member, Mr. Manning, and who was proved to have given and authorized the giving of bribes. But Mr. Manning called evidence which satisfied the Committee that Sowell, and those who acted with him, had a political interest in the place, and acted on their own account, and not by any authority from him; and the Committee, though they made a special report against the borough, preserved the seat of the sitting member. In the case of Newry,‡ of the present session, similar circumstances occurred. Sufficient primâ facie evidence of bribery appeared there to admit proof of the acts of Lisle, who was alleged to have been an agent, but in the progress of the case the Committee became satisfied that his acts were not connected with the sitting member, and though they made a special report as to the bribery, they exculpated the sitting member. So in this case, the decided negative which has been given by the evidence of the sitting members, must prevail over the very slight case of agency which has been set up by the petitioners.

Offers of bribes.

Many of the cases of bribery which it has been attempted to prove, amount to no more than the offer of a bribe, not accepted, or not acted upon by the voter. This

* Minutes, 1831. † Printed Minutes, 1827.

‡ See *ante*, p. 160.

is not such bribery as can affect the seat. In a moral point of view the offence may be complete, but it is not so in point of parliamentary law. In the Barnstaple case* the evidence went to show offers of money and places, made by the sitting member to persons who voted for the petitioners; but the sitting member was declared duly elected. The same point was raised and fully discussed in the Dumferling case.† In the Taunton case‡ the same question was solemnly discussed, and the Committee held that such offers, if the party did not accept them, did not constitute an offence by the law of parliament. There were many cases depending on the point, which were abandoned in consequence of that decision. The distinction is founded in justice, for it would be opening a door to the grossest perjury and fraud, and would involve candidates in most serious consequences, if a party, without implicating himself, could bring a charge so difficult to disprove, against a sitting member, and thereby deprive him of his seat.

Vote-money.

The gift of the vote-money does not amount to bribery. This money is given after the election; it is given equally by both parties, and without any previous contract or agreement respecting the vote. That being so, the case of Lord Huntingtower *v.* Gardiner§ fully establishes that such a gift is not bribery, though it will not be denied that the practice is a vicious one, and one which it would be desirable to prevent.

Refreshment tickets.

Next as to the refreshment tickets. The distribution of these tickets cannot amount to bribery. They were given to enable the voters to procure refreshment, and the giving them can at most, therefore, amount only to treating, which having taken place before the teste of the writ, cannot affect the election. The giving of these tickets cannot be bribery, because there was no stipulation as to the vote. They were given indiscriminately, the parties not being asked for their votes, or which way

* 1 Peck. p. 90; but see the observation on this case, *ante*, p. 176, in notis.
† 1 Peck. p. 7. ‡ Minutes, 7 March, 1831.
§ 1 B. & C. 297. See this case, *ante*, p. 172.

they meant to vote. In order to constitute bribery there must be an understanding that the vote is to be given in exchange for the bribe. In the Berwick case* the tickets were given as the price of the vote. A distinction was made, in point of the number of tickets given, between those who gave single and those who gave split votes; and in one case, where a mother had received tickets for the promise of her son's vote, and the son afterwards refused to vote, the tickets were returned. Neither does it alter the case that these tickets circulated in the manner which has been described. They were given for the purpose of refreshment; the sitting members cannot be responsible if they were turned to a different purpose. Of course the party who issued these tickets was bound to pay them when presented to him, into whatever hands they had passed. Suppose that, instead of issuing tickets, he had given an equal sum of money to each voter, for the purpose of procuring refreshment, unaccompanied by any stipulation for the vote—which of itself would not be bribery—would the circumstance of the voter applying the money to other purposes, instead of laying it out in refreshment, render the giver guilty of bribery? The cases stand on the same grounds; and the intention, therefore, with which the tickets were issued, must alone be looked to. Now the tickets bore on them the words "for refreshment." The object with which refreshment tickets have been resorted to at elections, has been to prevent unlimited entertainment. With that view they were employed in this instance, on the entry of the Lords, and afterwards, in order to prevent unlimited treating. At all events, not having been accompanied with any agreement as to the vote, they cannot be considered as bribery.

Lastly, as to the treating—Whatever the law may have originally been as to treating before the teste of the writ, and whatever it might be expedient that the law should be, it is now clearly settled that such treating is not illegal. Such has been the view taken by the legis-

* Cited *ante*, p. 200.

lature itself, in the resolution of 1677 and the provisions of the treating act. The words of the treating act are, "that no person or persons hereafter to be elected, &c. after the teste of the writ, shall hereafter, by himself or themselves, or by any other ways or means on his or their behalf, &c. directly or indirectly, give any present, gift or reward, or allow to any person or persons having voice or vote at such election, any money, meat, entertainment, or provision, &c. in order to be elected, or before being elected." Now the construction put by courts of law on this statute is, that the treating must be the act of the candidate—that is, he must do it by himself or some one authorized by him; it must be his act in law, though it may not be done by his own hand; and in addition to that, it must be treating in order to be elected. This construction of the act is clearly established by the case of Hughes *v.* Marshall.* In the case of Chester† there had been treating to a very great extent by means of tickets; 4000 tickets had been distributed; some were stated to have been lying about in the committee room while the sitting members were present; yet because it appeared that no authority had been given by the sitting members to the parties who issued these tickets, the seats were saved. Now in this case there has been no proof given that houses were opened, or refreshment supplied, after the teste of the writ, by the orders of the sitting members, or of any of their authorized agents: on the contrary, it has been proved that Mr. Nicholson actually prohibited publicans, who applied to him on the subject, from opening their houses. More than this it was not in his power to do; and it would therefore be the height of injustice to visit on the sitting members the misconduct of a set of publicans, who, speculating on the chance of being paid by some one or other, thought proper to open their houses not only without orders, but in direct defiance of the positive prohibition of the agent of the sitting member.

* 2 Cromp. & Jerv. See this case at length, *ante*, 169.

† C. & D. 68.

Reply. The counsel for the sitting member, in reply:—The agency of Dack and the others has been sufficiently

Agency. established. It is admitted that acts of bribery, in order to affect a candidate, must be done by himself or his authorized agent; but the case of Felton *v.* Easthope, the authority of which has never been shaken by any decision either of a court of law or a committee, shows that it is enough if the agent have a general authority, and that he need not have a specific authority to do the particular act; and the Middlesex case* establishes that if a candidate appoint an agent, and that agent appoint a sub-agent, the candidate will be responsible for the acts of the sub-agent. The cases cited in support of the agency are perfectly applicable; for the effect of those cases is, that if a party holds out another to the world as his agent, he will be bound by the acts of such agent. Here the parties whose agency is in question acted as agents of the sitting members, with their knowledge and approbation.

Offers. The offer to bribe is an act of bribery. The doctrine of Lord Mansfield, in the case of Rex *v.* Vaughan,† applies particularly to elections for parliament, and is conclusive on this point. The cases in which Committees have held that an offer to bribe was not fatal, do not relate to the candidate or his agent, but to the question whether, if a voter in the interest of a candidate attempts to bribe another voter, the person so attempting loses his vote. That question is altogether beside the present one.

Vote-money. There can be no question that the giving of vote-money in this case is bribery. It may be admitted that in order to constitute bribery there must be a corrupt agreement as to the vote; but such an agreement may be inferred from circumstances. The case of Lord Huntingtower *v.* Gardiner does not touch this case. Not only was that an action for penalties, in which the law would be construed with greater strictness than in such a case as the present, but the fact of any pre-existing agreement was negatived by the finding of the jury. Here it is admitted that a distinct understanding existed that this money

* 2 Peck. 31. † Burr. 2500.

would be given, which is tantamount to a specific agreement. It will make no difference that this money is paid by the other side also; for it is obvious that if a party were to declare his intention not to pay this money, he would stand no chance of being elected. The effect of it therefore is to influence the voter, and as such it is unquestionably bribery.

Tickets.

The issuing of the refreshment tickets has been shown to be bribery; but even assuming that it amounts only to treating, as is contended on the other side, it will be equally fatal to the sitting members; for it is clear that these tickets circulated up to the close of the election. If therefore they were applied to the purpose for which it is pretended they were issued, there must have been treating after the teste of the writ. The sitting members should have made them payable up to a certain day only, or should have called them in before a given day. If, owing to their not adopting precautionary measures, these tickets have been the occasion of treating after the teste of the writ, that treating must be fatal to the election.

Treating.

It has already been shown, that the circumstances connected with the treating necessarily lead to the conclusion, that it took place by the authority of the sitting members or their agents. The case of Hughes *v.* Marshall does not apply, for there no evidence of agency was given. Here, at all events, the sitting members have been shown to have been present while treating was going on, which brings this case within the principle acted on by the Committee in the case of Liverpool.

The Committee came to the following resolutions:

Resolutions of the Committee.

That the Hon. H. I. C. Talbot, commonly called Lord Viscount Ingestre, and the Hon. P. H. Stanhope, commonly called Lord Viscount Mahon, are not duly elected burgesses to serve in this present parliament for the borough of Hertford;

That the last election for the said borough is a void election.

They also came to the usual resolution, that neither the petition nor the opposition to it were frivolous and vexatious, and further came to the following special resolution:—

That it appears to this Committee that bribery and treating prevailed previously to and during the last election for the borough of Hertford.

Incidental points:—

The most material of these related to the proof of agency. Upon this subject two points arose, 1st, whether the declarations of persons alleged to be agents, could be given in evidence to prove the agency; 2dly, whether acts of bribery committed by other persons than the sitting members, could be given in evidence before the agency of such persons had been proved.

Allington's agency. Declaration of an alleged agent at the hustings, that he attended as check-clerk of the sitting members, admitted in evidence.

In order to prove the agency of a person named Allington, a witness was called, who stated, that he had attended at the poll booth as the check clerk of the petitioners; that his right to be there being disputed, he maintained it by stating that he appeared as check clerk for Messrs. Duncombe and Spalding; that Allington appeared as check-clerk for the Lords Ingestre and Mahon, and that his right to be there was also disputed. The witness being then asked how Allington maintained that right, the evidence was objected to on the part of the sitting members. It was urged that agency being a matter of the greatest importance, could only be proved by some act or declaration of the principal, not by the declarations of the alleged agents; otherwise any person might declare himself an agent, and thereby involve an innocent party in the consequences of his illegal acts. That if it had been shown that the declaration had been made in the presence of the sitting members, or afterwards recognised by them, it might be admissible, but that in the absence of any such proof it could not be received; the effect of the declaration here being not to affect the party making it, in which case it would be receivable in evidence, but to affect another party with whom he had not

been proved to be connected. In support of this view of the question, the judgment of Mr. Justice Buller, in the case of Cricklade, was relied on.* On the other side it was said, that in the present instance it was not contended that the declaration was a proof of agency, but that being a declaration accompanying an act, it was admissible in evidence to the extent of explaining that act. The act accompanied by the declaration might form part of the proof of agency; therefore the declaration must be admitted to explain it. The party whose agency was in question, was appointed check-clerk under an act of parliament; he acted in that capacity, and his right so to do was called in question. His statement as to that right must be received in evidence, though it might not of itself be conclusive against the sitting members.

The Committee decided that the question might be put.†

Declarations of alleged agents before the revising barrister, that they attended as agents for the sitting members, admitted in evidence.

The same point was raised as to the declarations of parties, made in the court of the revising barrister, that they attended there in the capacity of agents for the sitting members. In addition to the arguments which have been before stated, it was urged in support of the objection, that persons acting before the revising barrister are agents, not for the candidates, but for the voters, whose rights are under discussion, and that nothing which passed before the revising barrister could be now gone into, there being no question of scrutiny before the Committee. In answer it was said, that every thing done by persons, whom it was endeavoured to prove to have been agents, was admissible in evidence, because a series of acts, taken in the aggregate, might make up the proof of agency, though no individual act taken singly would amount to such proof. Any single act or declaration must therefore be received, it remaining for the Committee hereafter to determine on the effect of the evidence adduced.

The Committee resolved that the questions objected to might be put.‡

* Petries' Cricklade cases, 152, 229. † Printed Minutes, p. 7.

‡ Printed Minutes, p. 8. In the case of Midhurst, 2 Peck. 148, the

Evidence of acts of bribery admitted before agency proved.

The question as to the necessity of proving agency in the first instance, arose under the following circumstances:—Evidence was given that the sitting members, accompanied by Longmore and Twaddle, having canvassed a voter named Cousins, the latter refused to promise his vote, alleging as a reason "that the party had always promised to do great things for him and had never done it," and adding, that he should "first see some of the party before he promised;" that on Longmore then asking whether it was he whom the voter wished to see, the latter answered in the negative; after which the canvassing party retired, but Twaddle immediately afterwards returned. A question being then put as to what passed between Twaddle and the voter, the question was objected to by the counsel for the sitting members.

Mr. Follett, in support of the objection, contended that it was a well established proposition of law, that the proof of acts of bribery alleged to have been committed by an agent, must be preceded by proof of agency, and cited the cases of Coventry,* Durham,† Worcester,‡ Herefordshire,§ Middlesex,‖ Okehampton,¶ and Cirencester,** in all of which Committees had insisted on the agency being proved in the first instance. In the modern cases of Penryn†† and Wells,‡‡ the same rule had been acted on. He argued further, that the course adopted in those cases was maintainable on general principles.—It is fully established that a candidate cannot be affected by any acts done by another person, unless that person is proved to have been an agent; the agency must therefore sooner or later be proved; consequently it will be no hardship on the petitioner to be compelled to prove it in the first instance; whereas to allow evidence to be

Committee allowed the declarations of an alleged agent to be given in evidence; but in the Middlesex case, 2 Peck. 33, the Committee came to a contrary decision.

* 1 Peck. 93. † 2 Peck. 135. ‡ 3 Doug. 263.
§ 1 Peck. 209. ‖ 2 Peck. 33. ¶ 1 Peck. 359.
** 1 Peck. 466. †† Minutes, 28 Feb. 1827.
‡‡ Minutes, 6 April, 1827.

given of acts of bribery, before agency has been proved, would be an act of injustice towards the sitting member, inasmuch as acts of bribery being once proved, it is likely that a prejudice will be created on the minds of the Committee, which may render them less rigid in exacting that strict proof of agency, which law and justice require should be given before a candidate can be affected by the acts of another party. The practice of courts of law is undoubted. There proof of agency would be required before the acts of one party could be given in evidence to affect another. The rules of those courts are law here, as being the law of the land, and it would be most dangerous if they should be deviated from; different Committees would then adopt different rules, and no one would know how to get up his case, or what course to adopt in his defence.

Mr. Joy, in support of the evidence, in the first place contended, that sufficient evidence of agency had in this case been given, and that the Committee must, under the circumstances, infer that Twaddle had been left behind by the sitting members, for the purpose of completing a corrupt bargain with the voter. In the second place, even if this were not so, he denied that the rule was established as stated by the counsel for the sitting members, and cited the cases of Ilchester,* Mitchell,† Bristol,‡ Bridgwater,§ and Barnstaple,‖ in which Committees had allowed the proof of acts of bribery to precede the proof of agency. In the Liverpool case¶ also acts of bribery were given in evidence, though no agency had been proved, the sitting member having been shown to be cognizant of the acts done. With regard to the principle of the rule, he argued as follows:—It is true that the agency must be proved before the sitting members can be affected by the act done; but there is no reason why the petitioners should not be allowed to prove their case in the manner that may be most convenient to them. No injustice will be thereby done to the

* 1 Lud. 471. † 1 Lud. 83. ‡ 1 Doug. 243.
§ 1 Peck. 101. ‖ C. & D. 192. ¶ Minutes, 1831.

sitting members; for a competent tribunal will take care that the agency shall be fully proved, before they suffer the sitting members to be affected by any acts that may be proved to have been done by other parties. But great hardship would be imposed on petitioners if such a rule were established; for it is scarcely ever possible to give direct proof of agency, and most frequently the proof of agency is so mixed up with that of bribery, that it is impossible to separate them, or to prove the one except by proving the other. Agency is often proved by showing that the acts have been adopted by the principal. Yet it would be impossible to prove the adoption of acts of bribery by a candidate, unless the acts themselves had been previously proved. To establish such a rule would, therefore, be to exclude this mode of proving agency altogether. The effect of it would be to throw additional difficulties in the way of proving agency, and thereby to afford a greater facility of escape to parties who have violated the law. Besides, where bribery has been proved to have existed, though it has not been brought home to the sitting members, and the latter have consequently retained their seats, Committees have deemed it a part of their duty to make a special report against the parties actually guilty. One of the objects of this petition is, that such a course should be at all events adopted. But it is obvious that, even in cases where the grossest bribery has prevailed, the exercise of this most important duty of Committees may be prevented if the rule insisted on should be pursued.

Mr. Follett, in reply. It is admitted that there may be cases in which it is impossible to prove the agency except by proving the criminal acts; but there is no pretence for saying that such is the case in the present instance. In cases also where, from the nature of the acts done, the sitting members must be supposed to have been cognizant of them, proof of the acts done may precede the proof of agency. But nothing has been proved that can lead to such a supposition in the present case. In the Liverpool case knowledge of the bribery was dis-

tinctly brought home to the sitting member, and the decision of the Committee proceeded on that ground alone.

The Committee decided that the question objected to might be put.

Question as to proof of agency re-argued.

At the next sitting of the Committee a witness stated, that on the day of nomination Twaddle conducted his father, who was a voter, and himself to Mr. Nicholson's, and having called the latter, presented the father to them, saying that he had brought him to favour them with a vote; on which one of the sitting members shook hands with the voter, and thanked him. The witness was then asked what Twaddle had said on the way to Nicholson's house, when the question was objected to by Mr. Harrison, who stated that he felt it his duty to call upon the Committee to review their former decision. On the part of the petitioners an objection was taken to the point being re-argued, but Mr. Harrison was informed by the Committee, that if he could show that there had been a uniformity of decisions upon the point, in conformity with that for which he had been contending, since those general cases which were digested in the treatise of Mr. Rogers, the Committee would hear him.*

Mr. Harrison then insisted, that though there existed much discrepancy among the older cases on the subject, yet, that in the later cases, since 1820, committees had been unanimous in requiring proof of agency to be given in the first instance; and he referred to the cases of Penryn,† East Retford,‡ and Pontefract,§ in 1827, and the cases of Taunton|| and Dublin¶ in 1831, in which that rule had been acted on.

* From this it seems clear that the previous resolution of the Committee proceeded on the ground that in point of law bribery might be proved before agency, and not upon the ground that the agency had been sufficiently proved, which was one of the points urged by the counsel for the petitioners. If their decision had proceeded on the latter ground, it would have been unnecessary again to discuss the legal question.

† Minutes of Evidence, 28th Feb. 1827.

‡ Minutes, 5th April, 1827.

§ Minutes, 10th March, 1827.

|| Minutes, 28th Feb. 1831.

¶ Minutes, 24th Sept. 1831.

Evidence having been given to contradict a witness for petitioners, Committee refused to allow witnesses to be examined to corroborate his testimony.

It has already been stated, that evidence was adduced on the part of the sitting members to contradict the witness Russell Davis, who had deposed to the promise of a bribe made to him by Lord Mahon. After the evidence of the sitting members was closed, Mr. Joy, on behalf of the petitioners, applied to the Committee to be permitted to call witnesses to support the testimony of Davis, on collateral matters, in reply to the contradiction which had been given. On the chairman inquiring whether the application was put on the footing of the practice of courts of law, Mr. Joy admitted that he could not produce a precedent of any case in a court of law where such a course had been followed, but he submitted that the Committee were not strictly bound by the rules of the courts of law, and that if they thought that the evidence would tend to the elucidation of the case, they were at liberty to receive it.

Mr. Follett objected to the application, and submitted that any evidence in corroboration of the witness should have been given in the first instance, and that the only ground on which evidence could be received in reply was, the circumstance of a collateral fact having been stated in contradiction, which could not have been expected to be

stated were introduced by the Marquess, the counsel for the petitioners applied to the Committee during the course of these proceedings, that the chairman might be instructed to move the House, that a message be sent to the House of Lords for leave that the petitioners should make an application to the Marquess of Salisbury for the production of papers having reference to this case, with a view to the petitioners being let into secondary evidence in case of their non-production; and the counsel were informed that the chairman would move accordingly. At the following sitting the chairman stated to the Committee and counsel, that on his making the report to the House, as requested on the previous day, it had been considered by the House that it was not a motion of course, and that notice must be given of the motion; that he had in consequence given notice of a motion founded on the report. On a subsequent day the chairman read a letter which he had received from the Marquess of Salisbury, inclosing one of the leases in question, and admitting the existence of others; in consequence of which the counsel for the petitioners informed the Committee, that the motion which the chairman had been requested to make to the House was rendered unnecessary.—*Printed Minutes of Evidence*, pp. 162 and 224.

brought forward, and the contradiction of which would lead to the elucidation of the truth. No such ground existed in the present case, and the Committee would not, therefore, depart from the practice of the courts of law, the rules of which, in respect to evidence, were part of the law of the land, and of general application before all tribunals.

The Committee determined,* that the line of evidence proposed could not be gone into.†

The Report of the Committee (as stated, *ante*, p. 213,) was laid before the House on the 2d of April. The Minutes of Evidence were laid before the House and ordered to be printed.

The subsequent proceedings which took place in parliament on the Report, will be found in the Appendix to this work.

* Printed Minutes, p. 460.

† In the Dublin case (1827), a witness having been called by the sitting member to contradict certain witnesses for the petitioners, an application was made on behalf of the latter witnesses that they might be recalled, for the purpose of being confronted with the witness for the sitting member. The Committee acceded to the application.—*Espinasse, Dublin Case*, p. 43.

CASE IX.

BOROUGH OF ENNIS.

THE Committee was chosen on the 14th March, 1833, and consisted of the following members:

Hon. William Duncombe, (Chairman,) *Yorkshire.*

F. North, Esq. *Hastings.*	J. Oswald, Esq. *Ayrshire.*
W. Harland, Esq. *Durham.*	Sir Rufane Donkin, *Berwick.*
H. D. Goring, Esq. *New Shoreham.*	E. Hornby, Esq. *Warrington.*
J. P. B. Chichester, Esq. *Barnstaple.*	J. Stewart, Esq. *Lymington.*
T. Marsland, Esq. *Stockport.*	T. Houldsworth, Esq. *Notts.*

Petitioners—Electors.

Sitting Member—Francis Macnamara, Esq.

Counsel for the Petitioners—Mr. Crampton (Sol. Gen. for Ireland) and Mr. Rigby.

Agent—Mr. Tomlins.

Counsel for the Sitting Member—Mr. Harrison, Mr. Serjeant Merewether, Mr. Macnamara.

Agent—Mr. Beetham.

Petition.

THE petition stated, that at the last election for the borough of Ennis, Francis Macnamara, Hewitt Bridgman, Michael Finucane, and Henry Bridgman, Esqrs. were candidates. It contained a general charge of bribery and treating against Francis Macnamara, Esq. the sitting member, and stated that the said sitting member, by means of bribery, had obtained a colourable majority; whereas the said Hewitt Bridgman had the

Bribery and treating.

majority of legal votes, and ought to have been returned; and it prayed that the election of the sitting member might be declared void, and the return amended accordingly.

At the trial of the case, the counsel for the petitioners abandoned the scrutiny, and confined their case to the general charge of bribery and treating.

The case was one of fact exclusively, turning entirely on the degree of credit to be given to the evidence of the witnesses for the petitioners as to acts of bribery which were stated to have been committed by a Mr. Burton Darcy, an alleged agent of the sitting member, and involving no point of law except incidentally the question as to the necessity of proving the agency of Darcy, before evidence of his acts should be admitted.

14th March. Evidence of a witness under examination admitted as to acts of bribery before agency proved, but counsel directed to prove agency as soon as possible.

This question arose at the commencement of the case, under the following circumstances: — A voter named Molony, being called as a witness, deposed that having gone to the committee room of the sitting member, he was strongly pressed by Burton Darcy, in the presence of the sitting member, to vote for the latter; that Darcy promised him that if he would vote for the sitting member, he should have their interest, which would be better for him than money; to which the witness replied, that "he did not want their interest, he would rather have money;" that upon this the sitting member went away, leaving Darcy and the witness together, who then went together into a closet adjoining the committee room. The witness was then about to state what passed between Darcy and himself, when the evidence was objected to, on the ground that the agency of Darcy must be first proved.

The arguments on this point were for the most part similar to those insisted on in the case of Hertford;* they will therefore be omitted in the present instance: the same authorities also as were referred to in that case were cited in the present, with the addition, however, of the

* See *ante*, p. 217.

case of Evesham,* which was relied on by the counsel for the petitioners in support of the evidence, as a modern authority, in which the Committee had dispensed with the proof of agency in the first instance.

The Committee determined that the evidence of the witness as to the conversation which took place in the closet should be received, but requested the counsel to proceed to prove the agency as soon as possible.

In consequence of this intimation from the Committee, the counsel for the petitioners, previously to proving the acts of Darcy, proceeded to adduce evidence in proof of his agency. A witness being called, stated, that on the morning of the election he addressed the sitting member, saying "all is right between me and Darcy;—wont you assist your father in getting me the situation he promised me?" to which the sitting member replied in the affirmative; that the witness then said, "what an active good agent Mr. Darcy is for you;" to which the sitting member replied, "to be sure he is—it is for that I employed him." The witness further stated that he had often seen Darcy and the sitting member in the committee room of the latter, conversing together in the most confidential manner. Evidence was also given that Darcy on all occasions had appeared to act as agent for the sitting member. Upon this evidence the Committee, after argument, resolved that a sufficient primâ facie case of agency had been established to admit evidence of the acts of Darcy.

Evidence as to Darcy's agency.

15th March. Primâ facie case of agency held to be established.

The former witness having been recalled, stated that Darcy had offered him £5, if he would vote for the sitting member, which he however refused. Two other witnesses deposed that having agreed with Darcy to vote for the sitting member on condition of receiving £20, they were desired by Darcy to leave the closet of the committee room and return in a short time, and that on their return they found the money in notes lying in a corner of the closet. One of them however stated that, being ap-

* Minutes of Evidence, 1830.

prehensive that the bribery oath would be put to him, he returned the money. It should be stated that the evidence was by no means of a satisfactory or conclusive nature.

Defence of the sitting member.

The counsel for the sitting member called no witnesses. Their defence consisted in impugning the credibility of the witnesses for the petitioners, and insisting on the improbabilities of the statements which they had made. It was also strongly urged on the Committee that the rule of law which requires that the evidence of an accomplice should be confirmed by other testimony of an untainted character, was perfectly applicable in a case of this kind, which to a certain extent was penal in its consequences, as involving the loss of the seat, besides implicating the character of the parties concerned.

Resolution of Committee.

The Committee resolved that the sitting member was duly elected; and that neither the petition nor the opposition to it were frivolous or vexatious.

CASE X.

LONGFORD COUNTY.

THE Committee was chosen on March 19th, 1833, and consisted of the following members.

Thomas Wood, Esq. (Chairman,) *Breconshire.*

Hon. R. H. Clive, *Salop, South.*	John Heathcote, Esq. *Tiverton.*
R. Westley Hall Dare, Esq. *Essex, South.*	Wm. Turner, Esq. *Blackburn.*
Hon. E. R. Petre, *York, City.*	Robert Pringle, Esq. *Selkirkshire.*
Sir John Rae Reid, Bart. *Dover.*	Lord Ernest Bruce, *Marlborough.*
Charles James Burnett, Esq. *Maidstone.*	Hon. Sir R. L. Dundas, *Richmond.*

Petitioners—1. Electors.—2. Lord Visc. Forbes and Anthony Lefroy, Esq.
Sitting Members—Luke White and James H. Rorke, Esqrs.
Counsel for the Petitioners—Mr. Harrison, Mr. Joy, and Mr. Follett.
Agent—Mr. Baker.
Counsel for Mr. Luke White—Mr. Serjt. Merewether and Mr. Cha. Saunders.
Agents—Messrs. Farrers and Co.
Counsel for Mr. Rorke—Mr. D. Pollock.
Agent—Mr. Mundell.

The petitions state the candidates and return.

IN this case there were two petitions, the substance of which was, that at the last election for the county of Longford, Lord Viscount Forbes and Anthony Lefroy, Esq., Luke White and James Halpin Rorke, were candidates, and that at the close of the poll, although the majority of legal votes was in favour of the two first-named gentlemen, the sheriff unduly returned the sitting

members;—that at the registration, John Francis Fosberry, Esq. had been duly appointed as deputy assistant barrister, and had acted as such until the 14th of November, 1832, when there was a subsequent appointment of James Doherty, Esq. to the same office, the validity of which appointment was questioned in the petition; but the point was never afterwards raised before the Committee.

The appointment of the assistant barristers.

The petitions then went on to state, that from and after the respective times of their appointments, the said John Francis Fosberry and James Doherty sat daily in separate courts in the Court House of Longford, and each separately determined upon the validity of the claims of persons coming forward to register, and each adjudged and declared claimants to be entitled to be registered, and each signed certificates declaratory of the right of such persons to vote;—that in obedience to the act of parliament, the alphabetical list of notices for registry was duly called over three several times, the third calling whereof terminated on Monday, the 19th day of November;—that after the termination of the said third calling, the said John Francis Fosberry and James Doherty attended in their respective courts for three days, to hear the claims of such persons as had not appeared during the three calls of the list;—that on the 22d day of November, three proclamations having been first made, commanding all such persons as desired to be registered, and had not been registered, to come forward and they would then be registered, the said special session for the registration of voters was by public proclamation duly closed;—that upon the close thereof, the said James Doherty, in a speech, formally took leave of the county, and retired from the bench;—that on the following day, notwithstanding the public close of the said special session, the said James Doherty, without any authority or power so to do, did, contrary to law, in his own private lodgings, attended only by the clerk of the peace, and wholly without the knowledge or consent of the petition-

That James Doherty, Esq. the deputy assistant barrister, had irregularly admitted to be registered various persons after the court was closed, and at his private lodgings.

ers, or of those acting for them, adjudicate upon and determine the cases of fifty persons, whose claims to be registered he had in open court declined to admit or had rejected;—that out of the said fifty cases so privately adjudicated upon by him, he the said James Doherty admitted thirty-one persons to be registered and signed, and directed the clerk of the peace to sign certificates on parchment, declaring respectively the right of the said thirty-one persons to be registered;—and that immediately afterwards a notice on behalf of the petitioners was served upon the clerk of the peace for the said county of Longford, cautioning him against putting upon the registry of the said county, the names of the persons so improperly and illegally admitted to be registered. That a great number of other persons who were not qualified to vote for knights of the shire for the said county, of persons who were disqualified, and of persons who had ceased to be qualified, were by many decisions of the said John Fosberry and the said James Doherty, unduly admitted to be registered, and unduly obtained certificates. Then followed in detail the different classes of objections to those votes, likewise charges of bribery, treating, and intimidation, which were subsequently abandoned, and the petitions concluded with a prayer that Lord Forbes and Mr. Lefroy might be declared duly elected, and that the election and return of the sitting members might be deemed null and void.

That several other unqualified persons were unduly registered.

Prayer, that the election and return of the sitting members be pronounced null and void.

Mr. Harrison, for the petitioners, having abandoned the charges of bribery and treating, and having stated the points which would be raised in the scrutiny, proceeded to prove the poll.

The poll.

The numbers stood thus:

Mr. Luke White	649
Mr. Rorke	645
Lord Forbes	587
Mr. Lefroy	582

majority in favour of Mr. White over Mr. Lefroy, 67.

There were nine classes of voters to whom objections were taken by the petitioners. Classes of objections.

The 1st class comprised the thirty voters admitted by Mr. Doherty, the deputy assistant barrister, the day after he had formally closed the registry; these votes having been under consideration, but neither the affidavits having been sworn or signed, nor the certificates granted at the special sessions.

2d. Comprised certain voters who had been registered as freeholders, whereas the estate in respect of which they claimed was alleged to be no more than an estate for a long term of years.

3d. Comprised certain lessees under the Royal Canal Company, which it was alleged were precluded by 30 Geo. 3, c. 20, s. 10, from giving a vote.

4th. Comprised individuals whose property, after payment of rent and charges, was alleged not to be of a sufficient yearly value.

Another class consisted of Roman Catholics, who were said not to have qualified by taking the proper oaths; but upon this and the remaining other classes it was not found necessary to enter.

The first case taken was that of John Monaghan, being in class No. 1. It was proved by a witness who was present at the Registration Court, that Monaghan there swore that he held under two leases ten acres of land, the rent for the whole of which amounted to something more than 19*l.*; that he had built certain offices on it, and now expected to make of it 3*l.* an acre; and that upon this the case stood over, by Mr. Doherty's direction, for further evidence as to value. This took place on the 15th of November, the first day of the registration, and no additional proof in this case had been given down to the 22d, when Mr. Doherty publicly dissolved his court. The register, affidavit, and certificate of registry, were then put in; the entry of Monaghan's name on the former bore date 15th November, 1832; the affidavit was signed by the voter, and the jurat was as follows—" Sworn and subscribed before me, in open court, this 15th day of March 21st, John Monaghan's case.

November, 1832, *James Doherty*, Deputy Assistant Barrister." The certificate of registry bore the same date, and was signed by the same barrister, and by Mr. John H. Crawford, the clerk of the peace, who produced these documents. It was then proposed to examine this witness further, to show that in point of fact this date was altogether a fictitious entry, and that Monaghan and the other voters in the same predicament, had not been entered on the register until long after the 15th November.

A clerk of the peace, who had administered an oath attached to a certain document, may be examined to disprove the date appearing on the face of that document.

Merewether, Serjt. and Mr. Pollock, on behalf of the sitting members, here objected that parol evidence was not admissible to disprove the date of the affidavit and certificate. By the Irish Reform Act, 2 Wm. 4, c. 88, s. 20, that affidavit having been once signed becomes a matter of record; and it is an acknowledged principle of law, that a record cannot be impeached in this manner: " an officer or other person is not to be examined to the contents of a record, but only to its condition.* The 20th section also especially provides, that the barrister shall take care that the oath be agreeable to the form prescribed, and that no objection in point of form shall at any time thereafter be allowed to any such oath when signed. Then as to the certificate, it is signed by Mr. Crawford himself, and a witness cannot be called to falsify that which bears his own signature.

Mr. Joy, for the petitioners.—The question is, whether the document is authentic, whether it was *bonâ fide* signed on the day on which it purports to be dated. It has been proved that the case was only partially heard on the 15th November, and that it was then suffered to stand over until more satisfactory evidence could be produced. Now it does not appear that any such evidence was tendered before the final closing of the barrister's court, still less is there any proof of the signature of the affidavit on the day in question. The duty of the

* 1 Stra. 210. So again, a record is of so high a nature that no averment can be admitted against it; Co. Lit. 260, *a*. So also where a record is pleaded, no issue can be taken against it but *nul tiel* record; 3 Bla. Com. 331.

clerk of the peace is only ministerial; when the individual is once declared entitled to be registered, it then becomes the duty of that officer to furnish a certificate, and to make the requisite entry of that certificate at the foot of the voter's affidavit of registry, according to the 28th section of the act; but unless the party had a previous right to be registered, and unless that right had been previously in due time legally ascertained, that certificate is by no means conclusive. With respect to the register also, the 32d section expressly provides that no registry shall be valid unless made conformably to the provisions of this act; and here we contend that the contravention of those provisions was most flagrant in the fictitious date in this case, attached as well to the register as to the certificate. In the Limerick case* the magistrates had signed in blank certain rolls, afterwards filled up with the names of voters, and that signature was not deemed conclusive; but, on the contrary, proof having been given of the nature of the whole transaction, more than 500 votes were struck off the poll. Upon these grounds, therefore, the Committee will not shut the petitioners out from this line of examination.

The Committee resolved that the examination should be pursued.

It was then further proved, that the day after the public dissolution of the court, namely, on the 23d of November, Mr. Doherty had, at his lodgings, in the presence of the clerk of the peace alone, gone through the list of the cases that had been ordered to stand over for further evidence; that out of fifty voters, Mr. Doherty allowed thirty-three, none of whom were sworn before him; that the oath was administered to each, and amongst others to Monaghan, by the clerk of the peace or the town beadle, in the hall, the day after Mr. Doherty's court was closed, but it appeared that Mr. Fosberry's court was then still sitting, though in a different room. Each affidavit bore date November 15th, and they were prepared by the different agents on each side, and delivered

* Minutes, 3d May, 1830.

to the clerk of the peace, and some of them were signed by Mr. Doherty, before leaving the town on the 24th; others, amongst which was that of the voter Monaghan, were transmitted to him afterwards for signature to Dublin; these last were first signed by the clerk of the peace, as a voucher to the barrister for their authenticity: the date of their transmission was 12th December.

Mr. Joy, in summing up this evidence, contended that the whole proceeding was so informal, that neither the registration, affidavit, nor certificate, could be held valid. It is said that the affidavit and certificate are conclusive, and that by the 20th section, no objection against them in point of form must be suffered to prevail; but this is not an objection to the form; the real point here is, that there has been no affidavit sworn before the barrister at all, no oath clearly has been taken on which an indictment for perjury could be supported; that argument, therefore, falls to the ground; this man has in fact never been registered at all, and the vote must be struck off.

Merewether, Serjt., in support of the vote, submitted that there was no express provision in the act as to where or when the oath was to be taken, neither does the 19th section say that the adjudication of the barrister must be in open court. Here the oath was absolutely taken in court, whilst the other barrister, Mr. Fosberry, was still sitting, and as this oath was taken in compliance with Mr. Doherty's request, it may well be considered virtually to have been taken before him. But even supposing the barrister to have been guilty of an irregularity, that error on his part is not to be visited on the voter.* Here it is in evidence, that the doubt as to the value of the property was no longer considered an obstacle to Monaghan's registration; he was accordingly admitted by Mr. Doherty, and having been once registered, he was fully entitled to vote.

The Committee resolved that the vote of John Monaghan was a bad vote.

* See Hudson on the Irish Reform Act, p. 193. See also 3 Taunt. 540; Shepherd on Elections, 81; and the Colchester case, 1 Peck. 506.

Mr. Harrison now proposed to proceed with the other voters of the same class, but it having been arranged that they should stand over until the arrival of Mr. Doherty, who had been sent for, the Committee proceeded to the cases of *Francis* and *John Pilsworth*, claiming as joint tenants, in class 3. The claim of these voters had been opposed before Mr. Fosberry, the barrister, who nevertheless, after hearing the case, had decided that they should be registered.

March 22d. Francis Pilsworth and John Pilsworth's cases.

Merewether, Serjt. and Mr. Pollock, for the sitting members, now contended that under the 54th, 55th and 59th sections of the Irish Act, the decision of the barrister in favour of the voter, evidenced further by the affidavit and certificate, was conclusive, and that the Committee had no jurisdiction to go into the case.

Mr. Harrison, contrà, argued that the Committee had jurisdiction to inquire into these votes, and cited the decisions which had already taken place on the English Act on this point, in all of which the Committees had held, that although they had not power to go into cases which might have been raised, and were not raised before the revising barrister, still that wherever issue, as in this instance, had been taken before him, there they had full jurisdiction to revise his decision.*

The Committee resolved that they had the power to examine into the validity of the votes standing upon the register.†

The Committee has power to inquire into all votes standing on the register.

* See the Petersfield, Oxford, and Bedford cases, *ante*.

† This decision, it will be observed, was come to upon a case where the vote had been opposed before the barrister, but retained by him. In the Galway Town, the Committee held that they had jurisdiction, although the objection might have been taken before the barrister, and was not. In the Coleraine, the Committee went into a vote which had been rejected by the barrister. The Galway County decided in favour of, and the Carlow against the jurisdiction. The general argument having been in all these instances very similar, it has been thought desirable to give the speeches of counsel once only, and as the Galway Town appeared to be the strongest case, that Committee having consented to hear the objection even when the opposing party had omitted to take it before the barrister, the arguments will be there found given at length. See *post*.

Parole evidence not admitted to prove the nature of the claim made before the barristers.

A witness was then called to prove, by parol evidence, the nature of the claim made by these voters, and the opposition to it, before the barrister; but an objection being taken to this course, the Committee decided that they must have better proof of the claim. The affidavits were then produced and put in.

A Canal Company having been incorporated by Act of Parliament, it was enacted, that no one should vote at elections in right of any estate derived from them.

The Company having been dissolved, was re-incorporated by an Act, in which the disabling clause was omitted. Held that the present lessees under the Company were entitled to vote.

These affidavits stated, that the property in respect of which the claim was made, was held by the voters under a lease from the New Royal Canal Company, bearing date September 15, 1821. It appeared that the Royal Canal Company was first incorporated in the 29th Geo. 3, and that in the following year an act was passed (30 Geo. 3, c. 20,) which empowered the Company to purchase lands besides those to be used for the purposes of the navigation, not exceeding in value 500*l.* a year, and "to grant, alien, demise or dispose of the same lands, at their free will and pleasure." The 10th section however provided, "that it should not be lawful for any member or members of the said Company, or for any person whatever, to vote at an election of any member or members of parliament for any city, county, or borough, within the kingdom, in right of any estate or interest in any lands, tenements or hereditaments, which might be purchased or acquired by the said Company by virtue of or in pursuance of any of the powers by that act vested in the said Company, and that no person whatever should by virtue or in right of any grant, lease or demise whatever, made to him by the said Company, of any such lands, tenements or hereditaments, or of any estate or interest therein, derived mediately or immediately under the said Company, have or acquire any right whatever to vote as an elector at any such election as aforesaid, any thing in that act contained to the contrary notwithstanding." The Company having been subsequently dissolved, the 53 Geo. 3, c. 101, appointed commissioners to examine the claims of its creditors, and the canal, lands and buildings belonging to the Company were vested temporarily in the Directors-General

of Inland Navigation in Ireland. After that, the 58 Geo. 3, c. 35, was passed, by which the holders of loan debentures issued by the dissolved Company, were incorporated under the title of the "New Royal Canal Company;" and as this act, incorporating the new Company, contained no clause similar to that above cited from the 30 Geo. 3, c. 20, it was now contended that there was nothing to prevent the present lessees from voting in respect of this property.

The Committee determined that the votes were good, and in answer to an application from Mr. Joy, stated, that even if additional evidence had been offered to show that the lands in question were part of those held by the old Company, it would not have produced any difference in the decision of the Committee, as that had been come to on the ground of the absence of any disabling clause in the act incorporating the present Company.

Michael Green's case. Committee refused to strike off a voter's name from the register in the absence of positive proof that he was not entitled to the freehold.

The next case taken was that of *Michael Green*, class 2. This voter had been duly registered for freehold land at Lisamure, but had admitted before the barrister, that he derived title from the family of Tuite. A grant from James the Second, to an ancestor of that family, was now put in, by which the town and lands of Lisamure were granted to them for 1000 years, and it did not appear that there had been any subsequent grant of the reversion. The Tuite family held all the lands in Lisamure.

Upon this evidence it was now contended for the petitioners, that Green took no more than a leasehold interest under Mr. Tuite. For the sitting member, it was urged that there was a good *primâ facie* freehold right in the voter, or he would not have been registered, and that having been registered, and no notice having been now given him to produce his title-deeds, and it being extremely possible that the land derived to him from the Tuites was other than that granted by the Crown, and there being no proof at all of its identity, no case had been made out for disallowing the vote.*

* See *post*, p. 247, Macloghlin's case.

The Committee resolved that the vote should stand, as sufficient evidence had not been produced to justify them in striking it off the poll.

March 26th. Lawrence Farrell's case. An estate which yields to the claimant a clear yearly value of 10*l.* over and above the rents and charges specified by the Irish Reform Act, will entitle him to a vote for a county.

The Committee next proceeded with the objected votes included in class 4. The objection to the voters comprised in this class, was, that they possessed no interest of the value of 10*l.* per annum in their respective estates, after payment of rents and charges. In the case of *Lawrence Farrell*, it was proved that the voter held under a freehold lease 11¼ acres of land, with a house, the rent paid for which was 18*l.* 6*s.* The whole value to a third party, according to the estimate of surveyors, was 20*l.* 14*s.* 6*d.*, but the voter had at the registration sworn that he would not let the premises for less than 15*l.* per annum above the rent which he himself paid. Some doubt having been expressed in two preceding cases, as to the legal interpretation of the words "beneficial interest," in 2 & 3 Wm. 4, c. 88, and the mode in which it was to be computed, the Committee now expressed a wish that the question, "what beneficial interest will entitle a party to vote for a county," should be argued by counsel.

Mr. Follett, for the petitioners.—The point at issue is, what is the amount of beneficial interest requisite to give a vote? The object of this discussion is to ascertain how that interest is to be computed. The generally well-established rule in law for determining the value of property, is to ascertain what it will produce in the market; this is the practice adopted by the courts in questions of damage. The Reform Act has introduced no new mode of computation; the same course, therefore, which has prevailed heretofore must prevail now. In ordinary cases then rent has been considered a fair criterion of value. In the case of leaseholds, therefore, the true criterion will be the amount of rent which the property will produce above the rent given for it in the first instance. The 10 Hen. 6, c. 2, required that the voters for knights of the shire should every one have freehold to the value of 40*s.* by the year at least, above all charges; and

the freeholders' oaths, under 18 Geo. 2, c. 18, s. 1, and 35 Geo. 3, c. 29, s. 46, are both to the same effect; a lessee for lives, therefore, at a rent of 10*l.* a year, would have had a vote, provided the estate would have let for 40*s.* beyond the 10*l.* so due upon this original freehold lease. In the Bedfordshire case* the Committee resolved that the value of a freehold in right of which the owner votes, is the rent which a tenant will give for it, and not what the owner occupying it himself may possibly acquire from it: that case has been recognised as a decisive authority, both by Heywood and all other writers on election law.† In the Middlesex case‡ also the same rule was adopted.

Then as to the Irish Acts more especially: a practice having prevailed to a great extent of creating fictitious freeholds in that country, the 10 Geo. 4, c. 8, was framed by the present Chief Justice of the Common Pleas in Ireland, for the express purpose of preventing such practices in future; the 2d section of which act provides, that no one "shall vote at any election of a knight of the shire unless he has a freehold estate of the clear yearly value of 10*l.*" Then follows the oath in Schedule VI. embodying that provision, and containing further these words, "and that a solvent and responsible tenant could, as I verily believe, afford to pay for the same as an additional rent, fairly and without collusion, the annual sum of 10*l.* over and above all rent to which I am liable in respect thereof." According to this, therefore, there could be no doubt as to the manner in which the value was to be ascertained.

Next comes the Irish Reform Act, and that only differs in the use of the words "beneficial interest," and this seems to have been inserted with a special view to the new franchise created by that act: the word interest being specially applicable to a term of years.§ The 1st section gives the right of voting to leaseholders, upon the

* 2 Luders, 449.

† Heywood on County Elections, p. 86; Rogers on Elections, p. 132.

‡ 2 Peck. 104.

§ Co. Litt. 345 *b*.

condition of their possessing a beneficial interest in the unexpired residue of their leases, of the clear yearly value of 10*l.* or 20*l.* according to circumstances. Now a lease is beneficial or not, according to the rent reserved; a lease at rack rent is of course infinitely less eligible than one at so low a rent as will enable the original lessee to derive a profit by sub-letting, and this is the test often observed with regard to the propriety of retaining or throwing up a lease by assignees in bankruptcy. The words "beneficial interest" then, when applied to a freehold lease, are subject to the same rule of construction as when applied to ordinary leases for years; in such case the interest is that which the lessee would be able to make by sub-letting, more than he himself pays to the original lessor, and that will be the criterion of value: the oath originally stood "of the clear yearly value to him," but the words "to him" were struck out in the House of Lords;* and doubtless the value to a third person is the fair standard. In questions under the game laws, in the law of settlement,† and under the jury law, the same mode of ascertaining the value has been invariably adopted, and many other modern cases may be quoted in accordance with the same principle, amongst others those of The King *v.* Trustees of the Duke of Bridgewater,‡ The King *v.* Ashfield cum Thorpe,§ and Ward *v.* Const.‖

But the question before the Committee has in fact already been decided by a high authority. The 16th section of the act requires the claimant to make it appear, that the property in respect of which he seeks to be registered, is of the value and nature by this act prescribed. The 24th section further directs the judges of assize, upon appeal, "to try and inquire, by the verdict of a jury, whether such property is of the annual value within the meaning

* Wetherell *v.* Hall, 2 Lud. 588, note.

† Rex *v.* Hellingley, 10 East, 41. So also Rex *v.* Aston, 6 M. & Sel. 54.

‡ 9 B. & C. 72.

§ 9 B. & C. 940.

‖ 10 B. & C. 652. In this case it was held, that for the purposes of the Land-Tax Redemption Acts, the beneficial interest in a house leased at 25*l.* a-year, but worth 90*l.* a-year, was 65*l.* a-year.

of the act," and such a case was in fact brought before Chief Justice Doherty and the Lord Chief Baron of Ireland, in the instance of Patrick Bellew, whose claim had, on the ground of insufficient value, been rejected by Mr. Fosberry. The claimant there held six acres of land, one acre at a pepper-corn rent, and the other five at the rent of 7*l.* 10*s.* On the single acre there were a house and offices; he estimated the whole to be worth 10*l.* a-year to him, but would not swear what another would give for it. It was upon this contended by his counsel, that the oath of the jury authorized them to try whether the claimant's lands were worth to him 10*l.* over and above his rent, labour, taxes and expenses, and that the jury should be directed to take into consideration the value of the claimant's house, his crops, taxes and expenses, and to declare him entitled to be registered, if they should find him to have a beneficial interest to the value of 10*l.* yearly to him. Both the learned judges agreed in the decision, that there was no intention expressed or implied in the words of the Reform Act to vary the estimate of the value of the 10*l.* freehold which was to confer the franchise, and in the absence of any such intention, the qualification of a 10*l.* freeholder under this act, must be taken to be the same in value as that required by the 10 Geo. 4. The Chief Justice added, "it was the policy of that act to put an end to the revolting system of perjury which had prevailed previous to 1829, by substituting a fixed, certain, and unerring criterion of value, for the fallacious estimate of it formed by the claimant himself."* Upon these authorities, therefore, the voter's own estimate of the value of his property cannot be taken as the true criterion.

Mr. Pollock for the sitting members.—It is not disputed that rent is often taken as the criterion of value, and so far undoubtedly the authorities cited are in point; but rent is not the only criterion. Neither does the quotation from Coke upon Littleton, by any means, warrant

* See Hudson on the Elective Franchise in Ireland, p. 85; and Gumley's Law of Elections, Appendix, p. 3.

the distinction taken, which would apply the term interest or beneficial interest exclusively to a term of years.*

The decision of the Chief Justice and Chief Baron in Bellew's case, is certainly strongly against the voter, but this is a new act, and the Committee will come to their resolutions upon it unfettered by a precedent, which, to say the least of it, may, upon a point so doubtful, be in all probability reversed. The circumstances of the county franchises as they stand at present, as altered by the Reform Act, warrant a new mode of computing interest and value, and if the general tenor of the acts, both English, Scotch and Irish, and more especially the consequences which would now follow, if the former mode of estimating value should prevail, be looked to, it will readily be seen that that mode of computation is erroneous. All these acts, it must be remembered, were passed for the purpose of amending the representation of the people, and being in *pari materiâ*, if a clear solution of the present difficulty should be found in one, the principle may most reasonably and soundly be applied to, and acted upon in all. The 20th section of the English, the 1st section of the Irish, and the 7th and 9th sections of the Scotch Act, all touch on the same point, namely, the "clear yearly value," or "the beneficial interest of the clear yearly value;" the oaths to be administered are all the same, and the construction therefore should be also similar. Now the Scotch Act, in the 7th section, actually prescribes the mode in which this yearly value is to be ascertained; the words are, "and shall actually yield, or be capable of yielding, that value to the claimant, after deducting any feu duty ground, annual, or other consideration which he may be bound to pay;" and the 9th section further provides, that where the rent is payable in grain, "the value shall be

* The words are, "interest, *interesse*, is vulgarly taken for a term or chattel real, and more particularly for a future term, in which case it is said in pleading, that he is possessed *de interesse termini*; but *ex vi termini*, in legal understanding, it extendeth to estates, rights and titles, that a man hath, of, in, to, or out of lands, for he is truly said to have an interest in them."

estimated according to the average fiars of the counties in which the heritable subjects are situated for the three preceding years, and when payable in any other species of produce, according to the average market prices of the neighbourhood for the same period." Here, therefore, the legislature has clearly defined the mode in which the actual value is to be ascertained, namely, by calculating the value of the produce of the land to the individual claimant beyond the rent and charges to which he is liable—and this construction may legitimately be extended to all.

But supposing that the mode of computing value contended for on the other side should be adopted, the first absurdity which immediately occurs is, that landlords are to be supposed to be ready to let their estates infinitely below the fair value, otherwise there could be in no instance such a sufficient surplus of interest left in the lessee, as would enable him, by subletting, to secure a vote. But in point of fact the landlord always lets at the highest rent that can be obtained, and that being so, the surplus rent which could be got by his tenant would be so small, that there are very few cases in which it could secure a vote. At this rate a lessee at 45*l.* per annum, for the residue of a term of twenty years, would under the 20th section of the English Reform Act, which requires that the property should be of the clear yearly value of 50*l.* above rent and charges, be obliged to prove that his estate could in point of fact be let at 95*l.* per annum, before he could vote; and the same reasoning would apply precisely to the 1st section of the Irish Act; but surely it never can be said that the legislature meant to sanction and enforce such absurdities and anomalies as these. Lessees for lives paying a very low rent, would thus be the only persons benefited by that franchise which it was purposed to extend so widely to other leaseholders: the oath no longer contains the words "at what a solvent tenant could be found to give," and that being so, both sound policy and sound law are in favour of a construction

more calculated to diffuse widely the benefit of that which was meant to be a remedial and an enabling act.*

The Committee resolved that the vote of Lawrence Farrell was a good vote.

Resolution as to the method of computing value: the value to the claimant, the criterion.

They also came to the following general resolution, "that the right to vote for a freehold or leasehold in Ireland, is in such freeholder or leaseholder where the property for which he claims shall be of the yearly value of 10*l.*, and shall actually yield or be capable of yielding that value to the claimants, after deducting all rents and charges payable out of the same, except only public or parliamentary taxes, and other charges mentioned in the 10th section of 2 & 3 Will. 4, c. 88."

The petitioners then proceeded to strike thirty votes of class 4 off the roll.

Wm. Cosgrave's case. Evidence of Mr. Doherty.

The case of Wm. Cosgrave was now brought forward for the purpose of having the benefit of Mr. Doherty's evidence. That gentleman was then called as a witness. He stated that he had examined carefully into each case, putting his questions from the oath in the schedule, and making such other inquiries as seemed to him necessary; that he had adjudicated on every case before he left court, especially Monaghan's on the second day, saying that the vote should stand, unless further evidence should be produced on the other side to invalidate it; but that there was a great noise at the time; that he had left the court on the 22d, not as having finally closed it, but principally at the instance of the advocates on both sides; and that he had afterwards gone over the list at his lodgings with the clerk of the peace, chiefly as an accommodation to that officer, who had not taken a correct note of the cases adjudicated, he having been from time to time absent from court.

Mr. Pollock, for the sitting members:—It has been now satisfactorily proved that the cases supposed to have been decided on at Mr. Doherty's lodgings were in point

* See discussions on this point in the Lords and Commons, Mirror of Parliament, 1831, 1832.

of fact adjudicated on in court. Mr. Crawford might have been absent at the time, or might not have heard what passed, but Mr. Doherty's evidence on this point is unimpeachable, thanked as he was at the time for his conduct by the agents of all parties. This then being so, it becomes of very little importance to consider how and when the affidavit and certificate were subscribed. It is the adjudication and the registering which gives the right to vote; the affidavit and certificate are only certain means of proof, which may also be supplied from elsewhere. But supposing the oath to be necessary, the 19th section says that the person entitled to be registered shall verify his title by affidavit, and shall take and subscribe the oath stated in the schedule. Now here the verification of the title by oath is the essence of the enactment; and that has been in every instance done, for every voter was examined on oath before the adjudication; the time when and the place in which the subscribing took place is therefore, comparatively speaking, immaterial. Thus much as to the necessity that the oath should be taken in open court, which nevertheless we by no means admit. Then, as to the affidavit itself, it is in point of fact from the moment of signature a complete record; and the authorities which have already been cited, show that the validity of a record cannot be impeached:* neither are the provisions touching the certificate and affidavit, after all, more than directory, and clauses which have that object only in view are not to be construed strictly.† Again, if any informality occurred anywhere, it would rather appear to have been on the part of the clerk of the peace than of any other person, for it was that officer who forwarded to Mr. Doherty the certificates, under his own hand, stating when and how the oath had been taken; but to deprive the parties of their right on account of the improper

* See *ante*, p. 232. See also Co. Lit. 117 *b*; Zouch *v.* Bamfield, 1 Leon. 82; Colchester case, 1 Peck. 509.

† New Radnor case, 1 Doug. 342, note; Colchester case, 1 Peck. 506; Middlesex case, 2 Peck. 357, 369.

conduct of the clerk of the peace, would be attended with most injurious consequences: at this rate a whole English county might be disfranchised by the negligence or error of any one of the officers concerned in the registration; and thus those who had been actually registered would be worse off than others who, having been rejected by the barrister, and having subsequently tendered at the poll, would at least then have a chance of redress from a committee.

Mr. Harrison, contrà:—The case still stands on the same footing as it did before: the vote never was duly registered, and the affidavit and certificate were never duly sworn or subscribed: in point of fact there was no adjudication in court, and no affidavit sworn before the barrister. Not one of the bystanders was aware that these cases had been decided on, many of them also being agents in the conflicting interests, anxiously watching what was going on; and yet it is pretended that, in the language of the act, this man was declared and adjudged to be duly registered. It is said on the other side that the affidavit and certificate are only instruments of evidence; but they are the instruments especially prescribed by the act, and as such they must be duly made and produced, and without them the voter could not be admitted to poll. Again, it is contended that the voter is not to suffer from the omission of any ministerial acts omitted by the barrister or the clerk of the peace: but the fact is, that the voter himself has not done all that was required of him. It was his duty to tender the affidavit; and having omitted to do so in due time, he must take the consequences. The cases cited on this subject are not in point; and as to the distinction attempted to be drawn between the taking and subscribing the oath, it is quite clear that neither the one nor the other were done, as ought to have been the case, before the barrister and after his adjudication. There has been no compliance then with any one of the observances required by the act.

The Committee decided the vote of Wm. Cosgrave to be bad. Vote held bad.

The petitioners then proceeded to strike off the poll the remainder of this class.

The case of James Macloghlin ranged itself within the 2d class of objections, being a case of a pretended freehold, said to be derived from the Tuite family. An affidavit was now put in from Mr. Tuite (which, on the ground of his being eighty years old and too infirm to travel, Mr. Serjeant Merewether agreed to admit), stating that he was not seised in fee, nor possessed of any freehold interest in lands in Lisamure. The Gloucester case* was mentioned as an authority in favour of retaining the vote; but the Committee decided it to be bad. James Macloghlin's case.

Mr. Serjeant Merewether and Mr. Pollock, on behalf of the sitting members, then gave up the seats.

The counsel for the petitioners then proceeded to strike off other votes until they obtained a majority;† when the Committee resolved

That Luke White, Esq. and James Halpin Rorke, Esq. were not duly elected;

That the Hon. George John Forbes, commonly called Viscount Forbes, and Anthony Lefroy, Esq. were duly elected;

That neither the petitions, nor the opposition to them, were frivolous or vexatious;

That the Committee have to inform the House that they have altered the poll taken at such election, by striking off John Monaghan, &c. (74 names in all).

* There a grant, made in the time of Queen Elizabeth, of the premises for 1000 years, was put in, and proof given that in 1700 a person, from whom the voter's title was derived, had granted them in fee; but the presumption of a subsequent conveyance of the fee, which existed there, seems to have been entirely negatived here by Mr. Tuite's affidavit.

† This was done on the authority of the proceedings in the Waterford case, 1 Peck. 239, though it would rather appear from the cases there collected in the note that such a course is unnecessary, Committees having in numerous instances, upon the abandonment of the seats by the sitting members, at once declared the petitioners to be duly elected.

CASE XI.

LONDONDERRY CITY.

THE Committee was chosen on Thursday, March 21st, and consisted of the following members:

Henry Warburton, Esq. (Chairman,) *Bridport.*

James Mangles, Esq. *Guildford.*
Henry Winston Barron, Esq. *Waterford City.*
William Fielden, Esq. *Oldham.*
Lewis Weston Dilwyn, *Glamorganshire.*
Andrew Johnston, jun. Esq. *Cupar District.*
William Downe Gillon, Esq. *Linlithgow District.*
George Sinclair, Esq. *Caithness-shire.*
Thomas Gisborne, Esq. *Derbyshire, North.*
John Young, Esq. *Cavan County.*
John Bowes, Esq. *Durham, South.*

Petitioners—Electors.

Sitting Member—Sir Robert Alexander Ferguson, Bart.

Counsel for the Petitioners—Mr. Harrison, Mr. Follett, and Mr. Austin.
Agents—Messrs. Sherwood and Thorpe.

Counsel for the Sitting Member—Hon. Mr. Law, Mr. Joy, Mr. Pollock, and Mr. Alexander.
Agents—Messrs. Walker, Grant and Pugh.

The petition charged gross bribery.

The petition charged gross bribery on the part of Sir Robert A. Ferguson, his friends and agents, by means of which it alleged that his return for the city of Londonderry had been solely attained, and prayed that such return might be declared null and void.

Mr. Harrison, for the petitioners, after opening a general case of bribery, stated that he proposed to put in the return in order to prove the election, submitting that under the Irish election act, 1 Geo. 4, c. 11, s. 4, it was unnecessary to produce the poll; in support of

this position he cited the Dublin and Galway cases,* and added that such had been the modern practice.

Mr. Pollock objected to this course, contending that that section of the act applied only to counties and counties of cities, and that the poll itself must be put in. In support of this proposition he cited the cases of Dungarvon† and Newcastle-under-Lyne;‡ and submitted that the production of the poll was necessary, if it were only to identify the individuals whom it was intended to fix with bribery.

For the petitioners it was urged, in answer, that the only point necessary to be proved in this stage of the proceedings was, that an election had taken place, and its result; and that the certificate indorsed on the return, according to the act, specifying, as it did, the names of the candidates and the numbers on the gross poll, was sufficient for that purpose. The objection being then waived, the writ and return to the crown office were put in. On the writ appeared the following indorsement:

Gross poll for Sir Robert A. Ferguson .	308
Gross poll for the Right Hon. George Robert Dawson	226
Majority for Sir Robert A. Ferguson . .	82

It was then proved that the mayor, who was the returning officer for Londonderry, had himself duly signed the return; but the witness who proved the signature stated that the indorsement, which was intended to be in place of the certificate required by the act, was in the handwriting of the mayor's clerk, who generally transacted the corporation business. The mayor had

* Minutes, 1826.

† 1 Roe on Elections, 711. But this case was decided before the passing of 1 Geo. 4, c. 11, s. 4.

‡ 1 Peck. 489. This, being an English case, would appear hardly to have been in point.

It should be stated that, in the course of the proceedings, it appeared that Londonderry was a county of city. The contrary was assumed in this part of the argument.

been present at the time the indorsement was made, and his official seal was appended to the instrument.

In an Irish county of a city, the indorsement by the mayor's clerk upon the back of the return of the numbers who polled for each candidate is not such a certificate as is required by 1 Geo. 4, c. 11, s. 4.

Mr. Pollock upon this submitted that there was here no certificate made by the returning officer on the back of the return, as required by the act. This is a most material objection; for suppose an indictment were preferred against the mayor for a false return, how could it be supported upon such a certificate as this, which was neither written nor signed by him? The mayor appears to have signed everything but this certificate. The inference therefore is, that the indorsement had been made by the clerk after that officer had quitted the room.

Mr. Follett, contrà:—There is nothing in the statute which requires the returning officer to sign the certificate. The words of the act only require him to sign the return made to the crown office. Here the indenture was, in point of fact, signed by him; it bears his seal; and on the back of this very instrument is the indorsement in question. The whole therefore must be taken as one document. There is no dispute but that it comes out of the proper custody, namely, that of the officer of the crown office; and if so, the presumption must be in favour of its being correct. The Drogheda and the Dorset cases, and the Oxford* and Montgomery† of this session, show that the leaning of modern practice has been towards the admission of the merits of the case; and the Committee will not, under such circumstances, feel themselves justified in shutting out the petitioners from this inquiry, on an objection purely technical.

The Committee resolved, first, that the indorsement on the back of the return for the city of Londonderry, produced before the Committee by the clerk of the crown office, without further evidence of its authenticity, is no certificate of the names of the candidates and of the numbers who voted for each candidate, as it appeared at the final close of the poll, according to the provisions of the 1 Geo. 4, c. 11, s. 4; secondly, that the counsel and agents be called in, and that the chairman be directed

* *Ante*, p. 139. † *Post*.

to read to them the foregoing resolution, and to inquire of the petitioners whether they were prepared to produce the poll books?

Mr. *Harrison* stated that he was not prepared to produce the poll books.

The Committee then expressed a desire to hear one counsel on each side upon the following questions:— First, whether such time should be given to the petitioners as might be necessary to enable them to produce the poll books; and, secondly, whether, in default of the production of the poll books, the Committee ought to admit further evidence to prove the authenticity of the certificate.

The informality in the certificate having arisen from the neglect of the returning officer, and not of the petitioners, time given to the latter to send to Ireland for the poll books, in order to supply the defect.

Mr. *Harrison* on the first question contended, that in cases where, in the course of the investigation, evidence, the necessity for tendering which was not originally apparent, had subsequently become essential, committees had been accustomed to grant every reasonable facility in point of time for its production. The only exceptions to this rule were the decisions in the cases of Limerick* and Newcastle-under-Lyne,† but those cases had been subsequently overruled. The default here, if any, was in the returning officer; and as the petitioners had every reason to suppose that he would return a correct certificate, and as, besides, they were ready to defray every expense which might be incurred in consequence of the delay, the Committee could not in justice visit upon them the negligence of another. With regard to the second point, he submitted that as even with all possible diligence, the petitioners might not be able to produce the poll, the Committee ought, in that event, to take into consideration the peculiar circumstances of the case, and allow further evidence to be produced to authenticate the certificate.

Mr. *Pollock* on the first point urged, that the petitioners might have examined the return and certificate at the

* Corbett & Dan. 91. † 1 Peck. 489.

crown office, and having ascertained the defect, have provided themselves accordingly with evidence to prove the poll: as to the second, it was quite clear that no further evidence could authenticate that which was in its very essence informal and invalid.

The Committee resolved that, "as it would be unjust to make the petitioners finally responsible for any informality in an official document over which they had no control, the Committee, on its rising, would adjourn from day to day, or for such other period as the House might sanction, to such time as might be necessary to enable the petitioners to produce the poll books, or in default of their production would admit further evidence to prove the authenticity of the indorsement." Mr. *Pollock* having then again, in answer to a question from the Committee, refused to waive the objection, Mr. *Harrison* requested that the agent for the petitioners might be furnished with a list of the witnesses, for whose expenses the agent for the sitting member meant to apply.

The clerk of the crown office being re-examined, stated that in his experience no instance of such an irregularity in the indorsement of a writ from Ireland had occurred, and that it was by no means usual for agents to come and examine the returns.

30th March.

The Committee then, after leave obtained from the House, adjourned to the 30th of March.

There being no accompanying affidavit of verification of the poll, according to the provisions of 1 Geo. 4, c. 11, s. 3, the returning officer called to prove it.

On that day the poll books were produced by the joint town clerks and clerks of the peace for the city of Londonderry; but when it was proposed to read them in evidence, Mr. Law, on the part of the sitting member, objected that the proof of their authenticity was defective, there being no accompanying affidavit of verification from the returning officer, according to the provisions of the 1 Geo. 4, c. 11, s. 3. For the petitioners it was contended, that as the books came from the custody of the proper officer, the authenticity must be presumed to be sufficiently established, unless evidence was given on the other side to impugn it.

The Committee, however, resolved "that the mayor be called to verify on oath that the poll books which he delivered in are the original poll books of the election upon which the return was founded, and that from the final close of the poll to the time he delivered in the same there had not been any alterations, erasures, additions or obliterations made therein." This having been accordingly done, the books were received in evidence.

General case.

The general merits of the case turned chiefly on an act of bribery alleged to have been committed by the sitting member himself in person. It appeared that some time prior to the election, a society had been formed in Londonderry called the "Independent Club," at the head of which was a person named Horner, supposed to have considerable influence as a political partisan. Horner and his family were called to prove the fact of a bribe having been given him by Sir Robert Ferguson, and after a long examination, were contradicted in most particulars by the evidence for the sitting member. It was then proposed further to prove declarations made by a Mr. M'Clintock, one of the petitioners, with respect to the character of Horner and his credibility upon his oath.

Declarations made by petitioners against the character of one of their own witnesses are admissible in evidence, without calling the petitioners themselves.

Mr. *Follett*, on the part of the petitioners, objected to this line of examination. The proper course would be to call the petitioners and learn from themselves the opinion they entertain of Mr. Horner; whenever it is in the power of the party to compel the attendance of an individual as a witness, the declarations of that individual are not admitted by courts of law. Now such a power, with respect to examining the petitioners themselves, was vested in Committees by 53 Geo. 3, c. 71, s. 19, and the same authority has been continued and confirmed by 9 Geo. 4, c. 22. In the Rochester case, the petitioners were examined as to certain collateral facts; in the Bridport case,* the petitioners were examined to prove, that in point of fact Col. St. Paul was the real petitioner, and in both instances the Committees

* Minutes, 1820.

held, that although the petitioners, being parties, could not give evidence in support of their own cases, still that they might, under the authority of the act of parliament, be at any time examined by the counsel for the sitting member.

Mr. *Law*.—These declarations are admissible on the general principle that they are admissions by the parties against their own interest. Should the sitting member succeed in proving this fact, it is highly probable that this petition will be pronounced to have been frivolous and vexatious, and of course it is the direct interest of the petitioners to prevent the Committee from coming to any such resolution as that. In criminal cases, it is by no means unusual to give in evidence declarations of the prosecutor, showing that he was aware of the disreputable character of his own witnesses; and here the same course cannot in justice be denied to the sitting member. The act of parliament, although it enables the sitting member to call the petitioners, does not compel him to do so; and should the sitting member be driven to that course, and if the other side should afterwards deny the alleged declarations, another difficulty will arise as to the legality of offering further evidence to contradict witnesses who will thus have been forced on us.

Mr. *Follett*, in reply, contended that the last-mentioned course would be the proper method of proceeding. It was open to the sitting member to call the witness, to question him as to the fact of his having made such a declaration, and if he denied it, then to contradict him.* Formerly it was the practice to receive the declarations of rated parishioners against their parish, as of parties in the cause, but since the passing of 54 Geo. 3, c. 170, which has rendered them competent witnesses in such cases, in practice the production of the person making the declaration is always insisted on; the present case is precisely similar.

* See the cases on this head of evidence collected in 1 Phillips, p. 309, 310. See also the recent case of Bradley *v.* Ricardo, 8 Bing. 57.

The Committee resolved that the counsel for the sitting member might proceed with the examination.

It was then proved that several parties in the interest of Mr. Dawson, and amongst them more than one of the petitioners, had made strong reflections on Horner's character, and other witnesses declared that he was not to be believed upon his oath. It was also proved that Horner himself was cognizant of no less than forty-seven cases of gross bribery connected with this same independent club, directly in opposition to the interests of the sitting member. The other charges also made by the petitioners were flatly contradicted by most unimpeachable witnesses. One of these, a charge of bribery deposed to by a person named Flynn, was positively contradicted by the testimony of Mr. Smyly, a barrister.

Under these circumstances, Mr. *Follett* stated to the Committee, that as the principal charge against the sitting member stood on the unsupported testimony of Mr. Horner, and the character of the latter had been impeached, though he was prepared to show that the declaration of Mr. M'Clintock referred to his political, and not his moral character, yet he could not expect the Committee to act upon it; that as to the charge in respect of Flynn, the unsupported testimony of Flynn being contradicted by Mr. Smyly, he felt that he could not look for a decision in his favour upon that charge, especially after the tender of the honour and oath of Sir Robert Ferguson, that such charges were untrue; that the other charges referred to the acts of other persons, as to whom there might be a doubt how far the sitting member was affected by their acts; and that therefore the petitioners had come to the determination of withdrawing themselves from any further prosecution of the case.

The Committee then resolved "That the sitting member was duly elected; and that neither the petition nor the opposition to it were frivolous or vexatious."

They also came to the following special resolutions:

"That an extensive system of treating, coupled with other corrupt practices, was carried on and promoted previous to and during the late election for the city of Londonderry, by the members of a certain society called the Independent Club, most of whom were electors of the said city, and nearly one-third of whom were publicans; that the said club was opposed to the interests of the sitting member, who was in no way implicated in the practices of the said club.

"That the conduct of George Hill, Esquire, Mayor of Londonderry, and returning officer of the said city, has been highly irregular, in not certifying upon oath that the poll-books which he delivered in were the original poll-books for the election, on which the return was founded; and that from the final close of the poll to the time he delivered in the same, there had not been any obliteration, erasure, addition or alteration made therein, according to the provisions of the statute 1 Geo. 4, c. 11; and that the conduct of the said mayor has also been highly irregular and productive of expense to the parties to the petition, in not certifying, according to the provisions of the said statute, on the back of the return to the writ, the names of the candidates, and the numbers who voted for each candidate, as it appeared at the final close of the poll."

The minutes of evidence were laid before the House, and ordered to be printed.

CASE XII.

BOROUGH OF PORTARLINGTON.

THE Committee was chosen on Thursday, March 28th, and consisted of the following members.

J. Wemyss, Esq. (Chairman,) *Fifeshire.*

Lord Viscount Grimston, *Herts.*	John Ryle, Esq. *Macclesfield.*
J. S. Poulter, Esq. *Shaftesbury.*	Lord Viscount Milton. *Northamptonshire, North.*
Sir Wm. Molesworth, Bart. *Cornwall, East.*	Hon. A. H. Moreton, *Gloucestershire, West.*
Sir B. W. Bulkeley, *Anglesey.*	J. H. Vivian, Esq. *Swansea.*
Charles Stuart, Esq. *Buteshire.*	Thomas Chaplin, Esq. *Stamford.*

Petitioner—Hon. George Lionel Dawson Damer.
Sitting Member—Thomas Gladstone, Esq.
Counsel for the Petitioner—Mr. Harrison and Mr. D. Pollock.
Agent—Mr. Palmer.
Counsel for the Sitting Member—Mr. Serjeant Merewether and Mr. Joy.
Agents—Messrs. Freshfield.

IN this case, upon the petition being read, an interlineation appeared to have been inserted, as in the Southampton case;* upon which Serjt. Merewether, following the same line of argument which had been adopted there, contended that this interpolation vitiated the whole petition;—that by the 9 Geo. 4, c. 22, s. 4, it was absolutely necessary, in order to give the House jurisdiction to pro-

An objection to an interlineation in a petition having been taken, and the interlineation abandoned, the case allowed to proceed.

* See *ante*, p. 102.

ceed with the inquiry, that the petition should be subscribed by the petitioners, whereas, if these alterations had been made since the affixing of the signatures of the petitioners, it was impossible to say that this was in matter or effect the same petition which was so signed. In support of this argument he cited the same authorities as were referred to in the Southampton case.

Mr. *Harrison*, for the petitioners, abandoned the interpolated allegations, and then, upon the authority of the decision of the Southampton Committee, submitted that the rest of the petition should be held to stand good.

The Committee resolved that the petition should be proceeded with, the allegations contained in the interlineation being abandoned.

The petitioner not being prepared to enter upon his case, an adjournment refused.

The petitioners being then required to prove the poll, Mr. *Harrison* applied for an adjournment, on the ground of the non-arrival of his witnesses, stating that an impression had prevailed that this case would not come on until after Easter. In support of this claim upon the indulgence of the Committee, he cited the cases of Haslemere,* Cricklade,† Nairn,‡ Westmeath,§ Dublin,‖ Galway-County,¶ and Londonderry,** and stated that all the expenses of the delay would readily be paid by the petitioner.

Merewether, Serjt., opposed the application, and contended that no case could be cited in which an adjournment had been granted, where the petitioner, from his own laches, was unable to enter at all upon his case. This was the broad distinction, and under these circumstances it was too much that the Committee and other parties should be put to an inconvenience, which could only have arisen out of the most culpable neglect.

The Committee resolved that the case made out by the petitioner was not sufficient to induce them to grant the

* 2 Doug 341. † 2 Luders, 366. ‡ 3 Luders, 433.
§ Minutes, 1827. ‖ Minutes, 1826. ¶ Ib.
** See *ante*, p. 254. See also the cases on adjournment collected in a note to the case of Lincoln, *post*.

delay asked for, and that the petitioner being the party who asked for the inquiry, ought to have been ready with his witnesses.

Mr. *Harrison* suggested that the indorsement on the return in this case would be found to be insufficient, and that as that could not be alleged to be the fault of the petitioner, but was an omission on the part of the returning officer, of the same nature as occurred in the Londonderry case,* the Committee would be warranted, on the authority of that precedent, in granting time for the production of the poll.

Merewether, Serjt., said that the point would not be raised, as he admitted the validity of the return, and that there might be no pretence for saying that the case had been at all gone into, withdrew the objection as to the interlineation.

The Committee then resolved that Thomas Gladstone, Esq. was duly elected, and that neither the petition nor the opposition to it were frivolous or vexatious.

* See *ante*, p. 254.

CASE XIII.

CITY OF COVENTRY.

The Committee was chosen on the 26th March, 1833, and consisted of the following members.

Sir Oswald Moseley, Bart. (Chairman,) *Staffordshire.*

John Henry Seale, Esq. *Dartmouth.*	George R. Robinson, Esq. *Worcester.*
Mark Philips, Esq. *Manchester.*	Samuel Adlam Bayntun, Esq. *York.*
James Winter Scott, Esq. *Hampshire.*	Sir George Grey, Bart. *Devonport.*
Hon. H. T. Stanley, Esq. *Preston.*	Aaron Chapman, Esq. *Whitby.*
James Milnes Gaskell, Esq. *Wenlock.*	William Edw. Powell, Esq. *Cardiganshire.*

Petitioners—Electors.

Sitting Members—Henry Lytton Bulwer, Edward Ellice, Esqrs.

Counsel for the Petitioners—Mr. Crowder, Mr. Thompson.

Agent—Mr. Sherwood.

For the Sitting Members—Mr. Harrison, Mr. Rogers, Mr. Follett, Mr. Cockburn.

Agents—Mr. J. P. Beavan, Mr. Troughton.

Petition.*

THE Petition stated, that at the last election for the city of Coventry, Thomas Bilcliffe Fyler, Morgan Thomas, Edward Ellice, and Henry Lytton Bulwer, Esquires, were candidates;—that previous to and during the election, riots of the most disgraceful, tumultuous, and violent description, were excited and created by the partisans of the sitting members, to intimidate and prevent the

Riots previous to and during the election.

* 19th February, Appendix to Votes, p. 63.

electors from voting for Fyler and Thomas, and that the sitting members encouraged and countenanced such riots;—that on the 8th December, being the day of election, a great mob, consisting of persons not being inhabitants, or not having a right to vote, accompanied by the sitting members, paraded the streets of the city and committed gross outrages and assaults on the electors in the interest of Fyler and Thomas, and on the persons and property of other peaceable inhabitants of the said city;—that the conduct of the said mob was so outrageous and alarming, that most of the electors in the interest of Fyler and Thomas were deterred through fear from appearing at the hustings;—that the said T. B. Fyler and Morgan Thomas, not being accompanied by any mob or number of persons, were violently assaulted and beaten, and many of their friends severely injured and wounded, and their lives endangered, and were thereby prevented from proceeding to the place of election, until the mayor and magistrates, accompanied by numbers of special constables, with much difficulty escorted them. The petition then went on to state, that on Monday, December 10, being the day appointed for taking the poll, the most riotous, tumultuous, and brutal proceedings, utterly incompatible with the freedom of elections, took place at the hustings;—that great numbers of electors in the interest of Fyler and Thomas were forcibly prevented from polling, and assaulted, stripped of their clothes, beaten and kicked in the most cruel and wanton manner;—that many others who had voted for F. and T. were immediately pulled out of the compartments of the booth where they had voted, and assaulted, kicked and beaten, till their lives were despaired of;—that many others were threatened with similar treatment, and were in consequence deterred from exercising their franchise, and went away without polling, though they attended expressly for the purpose of voting for Fyler and Thomas;—and that the said outrages took place immediately around and close to the hustings, with the knowledge and in the presence

Assault on the candidates Messrs. Fyler and Thomas.

Riots on the day of polling.

Charge against the sheriffs.

of Adie Cramp and John White, the sheriffs and returning officers for the city of Coventry, who, though repeatedly requested to prevent the said outrages and afford protection to the voters, and also adjourn the poll, refused to interfere;—that the conduct of the mob around the hustings was so alarming, that great numbers of electors, who would have voted for Fyler and Thomas, were deterred from going to the hustings to give their votes;—that many others, by means of threats and intimidation, and the vengeance inflicted on those who voted for Fyler and Thomas, were compelled to vote for the sitting members, contrary to their wishes and intention;—that all the voters known to be in the interest of Ellice and Bulwer had free access to the hustings, whereas the voters in the interest of Fyler and Thomas were prevented from giving their votes; that the said Fyler and Thomas, being unable to obtain a free and fair election, resigned the contest, and that at the time of their so resigning, the sitting members had not polled a majority of electors. The petition then stated, that by means of such riots great numbers of the electors of the said city were deprived of the free and unbiassed exercise of their franchise; and expressed the belief of the petitioners that if all the electors desirous to vote for Fyler and Thomas had been permitted to give their votes without intimidation or violence, the said Fyler and Thomas would have obtained a majority of votes. It then concluded in the following terms:—" that in consequence of the outrageous, riotous, and atrocious proceedings during the said election, the petitioners had no opportunity, at such election, of requesting the said Henry Lytton Bulwer to swear to his qualification in the manner prescribed by the statute respecting the qualification of members of the House of Commons; that the petitioners verily believe that the said Henry Lytton Bulwer has not the requisite qualification or estate to be capable of sitting or voting in the House; that by these and other undue, illegal and corrupt means and practices, on the part of the said

Resignation of Fyler and Thomas in consequence of violent proceedings.

Inability to put qualification oath to Mr. Bulwer.

Mr. B. not qualified.

Edward Ellice and Henry Lytton Bulwer, the sense of the electors of the said city of Coventry has not been legally and properly taken, and no due election had; the petitioners therefore humbly pray, that the House will be pleased to take the premises into their serious consideration, and that the said Edward Ellice and Henry Lytton Bulwer may be declared to have been not duly elected, and that the return of the said Edward Ellice and Henry Lytton Bulwer may be declared void, and that such other relief may be granted to the petitioners as to the House may seem meet." Prayer.

The nomination of candidates took place on the 8th December. The 10th was the day fixed for taking the poll. At the close of the first day of polling, Messrs. Fyler and Thomas resigned the contest.

The numbers on the poll were as follows:—

For Mr. Bulwer	1613
Mr. Ellice	1607
Mr. Fyler	371
Mr. Thomas	366

The case, as opened by the counsel for the petitioners, divided itself into two parties; firstly, a general charge of riot, affecting the election generally: secondly, a charge of want of qualification, directed against Mr. Bulwer alone.

It was proposed by the counsel for the petitioners to proceed first with the general charge of riot, and to take the sense of the Committee upon that part of the case; and if the decision of the Committee should be unfavourable to the petitioners upon that part of the case, then to proceed to question the qualification of Mr. Bulwer. This course of proceeding was objected to by the counsel for the sitting members, who submitted that the question of the qualification should be gone into in the first instance. They urged that as Mr. Bulwer, even if the question as to the riots should be decided in favour of the sitting members, would be deprived of his seat, should his qualification prove defective, it would be a great hardship upon him to be compelled to undergo consider- Where a petition contained a general charge of riot, and also a charge of want of qualification, directed against one sitting member:— Held, that the petitioners might proceed with the general charge first.

able expense in defending the seat upon the charge of riot, when ultimately he might derive no benefit from the proceedings. On the other hand it was contended that the petitioners were at liberty to conduct their case in the manner they might think best, and that the charge of riot was one upon which many witnesses would be to be called, and which it was therefore desirable to dispose of as quickly as possible, in order that the witnesses might be dismissed.

The Committee determined that the general charge of riot should be proceeded with in the first instance.*

Evidence as to riots.

The evidence adduced by the petitioners upon the charge of riot was in effect as follows. It appeared that on the 8th December, being the day of nomination, a considerable mob of persons in the interest of Messrs. Ellice and Bulwer, and of whom many were stated to have been strangers, assembled in the vicinity of the hustings; that on Messrs. Fyler and Thomas, together with a few friends, proceeding from the King's Head Inn, which is within a short distance from the hustings, in order to proceed to the place of nomination, they were attacked by the mob, and several of them having been severely beaten, the party were forced back into the Inn. Being unable to proceed to the place of nomination without assistance, they were compelled to apply to the mayor for protection, who, accompanied by special constables, escorted them, not without difficulty, to the place of nomination. The nomination then took place in due form, though amid considerable uproar, the hustings being surrounded by the partisans of the sitting members.

Attack on the candidates.

Riots on the day of polling.

On the morning of Monday the 10th of December, the day appointed for the poll, the party of Fyler and Thomas pre-occupied the hustings before the polling began. Shortly after the polling began, the party of the sitting members, in a large body, accompanied by the sitting members, appeared in the Cross Cheaping, an open space on which the hustings were erected, and attacked the party of Fyler and Thomas, dragging them out of the

* Printed Minutes, p. 5.

compartments and driving them from the hustings, and using towards many of them extreme and unjustifiable violence. Some were dragged to the ground, and then beaten and kicked in a ferocious manner. One voter deposed that he was so terrified that he did not dare to poll for the remainder of the day; another that he was so severely beaten as to be unable to go to the hustings again for that purpose. The compartments and the space around the hustings were then occupied by the voters in the interest of the sitting members. Evidence was further adduced to show that after the hustings had thus been occupied by the party of the sitting members, voters who polled for the opposite party were subjected to severe ill-treatment. One witness, who observed the proceedings on one side of the booth during the whole day, stated that he saw from twenty to thirty persons severely beaten; another spoke to having witnessed, during the course of the day, five or six similar instances.

Witnesses were called, who spoke to acts of violence committed either on themselves or other voters up to the close of the day's polling. One witness stated, that having voted at twelve o'clock, he was severely ill-treated, another that he was similarly treated after voting at two, and another that he had experienced similar treatment after voting at three. Evidence was also adduced to show that voters had been deterred from voting. One witness stated, that having been beaten in the morning, he returned to the hustings at three o'clock, but found the mob still violent, and was in consequence deterred from going up to the poll. Another voter deposed that he twice attempted to poll, once in the morning and a second time at two o'clock, but that he was on both occasions forcibly prevented from polling, and on the latter much beaten. Other witnesses stated, that no voter could have polled for Messrs. Fyler and Thomas up to three o'clock without personal danger; others, that the violence and danger continued up to the close of the polling. Evidence was also adduced to show that a considerable body of strangers from the adjacent villages had

been hired and introduced into the city by partisans of the sitting members, for the purpose of overpowering and intimidating the voters in the interest of the opposite candidates. Some of these, it appeared, had been in the city for several days previous to the election, but the greater part were brought in on the night preceding the day of nomination. A considerable body of these persons were hired by one Randal, a publican, and were entertained at his house, which was known by the name of the Pack-Horse. It was stated that Randal had acted as the principal leader of these hired strangers, and that the latter, upon signals given by him as to the persons they should attack, were instructed to fall on the voters of the opposite party, to rip up their clothes, and beat and otherwise ill-use them. Some of these persons being called as witnesses, stated, that having been originally hired by Randal, and engaged in the scenes of violence which took place on the day of nomination, they were dismissed on the night of that day, it being at the same time intimated to them by Randal, that if wanted again they would be sent for on the following day; that on the next day they were desired, by two strangers, to return to the Pack-Horse; that they accordingly returned thither, when they were locked up for the night, and on the following day were employed in the perpetration of the acts of violence which have been before detailed.

After the tumult and violence had continued, according to the statement of the witnesses for the petitioners, during the whole of the day of polling, at four o'clock Mr. Twist, an agent of Messrs. Thomas and Fyler, announced that these gentlemen had resigned the contest, and consented to the return of the sitting members. Mr. Twist, in his examination, stated, that the motives which influenced Messrs. Fyler and Thomas in adopting this course were, firstly, a belief that a majority of the voters had actually voted for Messrs. Ellice and Bulwer; a belief produced by a placard which was handed about the booths, which stated that Messrs. E. and B. had already polled upwards of 1,400 voters, but which state-

ment afterwards proved to be erroneous; and secondly, a conviction that it would be impossible to induce the voters to go up to the poll, after the violence which had taken place. It did not appear, however, that on the resignation being announced, any reference was made to the violence offered to the voters, the state of the poll being alone assigned as the ground of the resignation.

Charge against the sheriffs.

In support of the charge against the sheriffs, the agents of the unsuccessful candidates being called as witnesses, deposed that they, as well as the candidates themselves, from the commencement of the violence and riot, and during its continuance in the subsequent part of the day, repeatedly applied to the sheriff, to interfere to protect the voters in their interest, and to adjourn the poll, at the same time directing their attention to the acts of violence and outrage which were taking place around the hustings. During the course of the morning, a protest, signed by two electors, was delivered to the sheriffs, stating that the parties from whom it proceeded were deterred from voting by a sense of personal danger, arising from the outrageous proceedings of the persons surrounding the booth, and calling on the sheriffs to adjourn the poll. Notwithstanding these applications the sheriffs did not adjourn the poll, neither, according to the witnesses of the petitioners, did they afford any protection to the voters. It was stated that Mr. Cramp, one of the sheriffs, on being applied to by the agents to prevent the violence, merely replied "if it had been on the other side, you would not have minded it;" and that Mr. White, the other sheriff, on one occasion, when application was made to him to adjourn the poll, replied that "he thought the poll ought to be adjourned, but that he could not do as he liked." Application was also made to the under-sheriff for his interference; but his answer was that he could do nothing, "as one sheriff was pulling one way and the other another."

Sheriff and mayor summoned by the Committee.

During the progress of the petitioner's case, the Committee thought proper to summon Mr. Cramp, one of

the sheriffs, together with Mr. Rotherham, who had been mayor of the city at the period of the election.* Mr. White, the other sheriff, having been called at the outset of the case to produce the poll, the counsel for the sitting members were then allowed by the Committee to cross-examine him as to the circumstances connected with the election. After the case of the petitioners was closed, the Committee proceeded to examine the other sheriff, Mr. Cramp. The result of the examination of the sheriffs was as follows:—They stated that they had declined to accede to the applications made to them to adjourn the poll, because they had seen no sufficient reason for having recourse to such a measure; inasmuch as, after the first disturbance, arising from the party of the sitting members dispossessing the other party of the hustings, was over, the compartments continued to be filled with voters, and the polling went on uninterruptedly, no violence whatever taking place in the compartments. The sheriffs also stated that they did not observe any acts of violence committed on the voters of Messrs. Fyler and Thomas during the remainder of the day, but they admitted that, owing to the compartments in which the voters polled being raised to a considerable height round the booth, they could not overlook the space adjoining, or see what was going on there. They further stated, that though they refused to act upon the mere statements of the agents as to the violence and obstruction offered to the voters outside of the booth, considering such representations merely in the light of complaints such as are frequently made by the weaker party, they pledged themselves that if affidavits should be produced to them that voters were prevented from coming up to the hustings, they would adjourn the poll, but no such affidavits were produced. With respect to the arrangements for taking the poll, it appeared that the sheriffs, previously

* These witnesses were considered as the witnesses of the Committee, but the counsel on both sides were allowed to put such questions as they thought fit after the Committee had concluded their examination.

to the election, had called on the agents of both parties to meet them, in order to agree on the arrangements which it might be expedient to make, but the agents of Fyler and Thomas declining to attend, the sheriffs did not allow those of the other side to do so, and proceeded to make the arrangements themselves. They erected two booths immediately contiguous to one another, with a small passage only between them, and the city being divided into ten wards, they built up ten compartments round the booths, allotting one as a polling place for each ward.* It appeared that a body of constables had been provided in the first instance, and that about eleven o'clock the sheriffs caused from fifteen to twenty constables to be stationed at each compartment, in order to secure access to the voters. They stated, that about one o'clock, in consequence of the representations made to them by the agents of Messrs. Fyler and Thomas, that the voters could not get up to the hustings, they applied to the mayor

* By 2 Will. 4, c. 4, s. 68, it is enacted, that at every contested election for any city or borough, "the returning officer shall, if required thereto by or on behalf of any candidate, and if not so required may, if it shall appear to him expedient, cause to be erected for taking the poll at such election, different booths for different parishes, districts, or parts of such city or borough, which booths may be situated either in one place or several places, and shall so be divided and allotted into compartments as to the returning officer shall seem most convenient, so that no greater number than six hundred shall be required to poll at any one compartment."

There is, however, a local act (21 Geo. 3, c. 54,) for regulating the election of members for the city of Coventry. By sect. 14 of that statute, it is enacted, that "the returning officer or officers shall, at all future elections of citizens to serve for the said city, cause the booth for holding such election to be erected in the widest and most convenient part of the open market-place, called the Cross Cheaping, not contiguous to any other building." By this act the sheriffs appeared to have been mainly guided on the present occasion. It will be seen that the Committee in their report (post, p. 289,) resolved, that "it would have been expedient to have erected booths in several places for taking the poll at the said election, and that owing to the want of the said arrangement, great opportunity was given for riot and disturbance." They must therefore have been of opinion that the general statute, though it does not make it compulsory on the returning officer to erect booths in more than one place, but leaves it in his discretion, was sufficient to annul the positive provision of the local act, which requires that the booth shall be erected in the widest part of the Cross Cheaping.

for a reinforcement of 100 special constables; the mayor, however, was only enabled to send eighty to their assistance. With this exception it did not appear that they had at all communicated with the mayor or other magistrates, or attempted to take any measures in concert with them for securing the public tranquillity or suppressing the disturbances which took place around the hustings.

Defence of the sitting members.

The counsel for the sitting members, in their cross-examination of the petitioner's witnesses, endeavoured to elicit the following facts; firstly, that a formidable body of hired strangers had been engaged by the opposite party, and had formed part of their mob; secondly, that the opposite party had been the aggressors, by attacking the party of the sitting members on their approach to the hustings; thirdly, that after the first conflict tranquillity was restored, and free access to the hustings afforded to the voters of both parties. In answer it was not denied that strangers had been employed by the party of Fyler and Thomas, (though not in the number asserted by the other side,) but it was alleged that that line of conduct had been resorted to in consequence of the violence offered to those candidates and their friends, and for the purpose of protecting them from a repetition of similar treatment. With respect to the other points, the witnesses for the petitioners denied that their party had been the aggressors, or that up to the close of the poll freedom of access to the hustings, without danger to the voters in the interest of Messrs. Fyler and Thomas, had been re-established. It appeared, however, from the poll books, that towards the latter part of the polling, the number of votes polled for Messrs. Fyler and Thomas had considerably increased, the number polled in their favour being, towards the close of the poll, greater than the number polled by their opponents. It appeared from the evidence, that little or no noise or disturbance existed in the interior of the booth, and that the qualification-oath might without difficulty have been tendered to either of the candidates.

Mr. *Harrison*, in opening the case for the sitting members, stated that he should prove the following facts:— that on the 9th December, a body of from two to three hundred strangers, composed of prize-fighters, colliers and navigators, had been hired by the agents of Fyler and Thomas and introduced into the town; that these persons formed part of the mob of their party on the morning of the 10th; that they paraded the streets before day-break with every demonstration of a determination to use extreme violence towards the friends of the sitting members; that the party of Fyler and Thomas having taken possession of the space around the hustings, these strangers were drawn up across the street to prevent the voters of the sitting members from getting up to the hustings, and that on the approach of the latter, the party of Fyler and Thomas attacked them, but were speedily overpowered, after which it could not be denied that in the excitement of the conflict they had been severely ill-treated. He further stated, that he was prepared to prove, that though in the outset some indiscreet friends of the sitting members had introduced strangers into the town, as soon as this fact came to the knowledge of the sitting members, after their arrival on the 8th, they immediately insisted that all such practices should be discontinued, and all the strangers were accordingly dismissed on the evening of the 8th. He should be able to prove that the body of men who were stated to have been lodged at Randal's, (the Pack-Horse,) on the night of the 9th, had gone there by mistake, having been engaged by the opposite side, and directed to go to another public-house, known by the same name, and which was in the interest of the other party; that having gone there they were locked up by Randal to prevent their discovering their error, and by a mere electioneering manœuvre had been thus withheld from affording their services to the opposite party. He should further prove, that the sitting members had done all in their power to prevent disturbance, by writing on the evening of the 9th to the mayor of Coventry, communicating to him the fact of strangers having been brought into the

Case of the sitting members.

town, and calling upon him to adopt prompt and energetic measures for the preservation of the peace of the city. He further stated that he should prove, that after the first conflict had subsided, more especially in the latter part of the day, comparative tranquillity had been restored, and freedom of access afforded to the voters of all parties. Lastly, he proposed to show, that in consequence of the deaths of some of the voters, whose names were on the register, and of others having been twice inserted, once in the capacity of freemen and again in that of 10*l.* occupiers; and also from the circumstance of some being incapacitated from voting in consequence of being employed as poll clerks, the sitting members, who, as it was, had polled within fifty or sixty of a majority of the voters on the register, had in point of fact polled a majority of the actual voters. Upon the law, as applicable to the facts of the case, he argued as follows:—

Argument for the sitting members.

Even upon the case established by the petitioners, independently of the facts which the sitting members are prepared to prove in evidence, the return of the sitting members cannot be invalidated. It is clear that the attack made on the sitting members on the day of nomination cannot be taken into consideration; for the nomination took place in proper form, and it cannot be contended that that attack produced any effect on the polling on the subsequent day. Then as to what occurred on the day of polling. Two days are allowed by the law as the time during which the polling is to continue,* but the unsuccessful candidates thought proper to resign on the close of the first day. It is true they now aver that their motive for resigning was a belief that after the violence which had taken place, their voters would not come up to the poll; but it is to be observed, that when the resignation was announced, no allusion was made to any such motive. And even supposing them to have been influenced by such a belief, they ought not to have acted on a mere impression; they should have called on the magistrates to take measures for preserving tranquillity, and at all events

* 2 Will. 4, c. 45, s. 67.

they ought to have abided the result of the second day, on which there would have been abundant time for every elector still unpolled to have voted. The only reason assigned at the time of resignation was the state of the numbers, and this beyond a doubt was the real motive. It is said, however, that this proceeded upon an erroneous belief as to the state of the poll. But it would be preposterous to contend that, because the other party suffered themselves to be deceived by an erroneous calculation, this resignation is to be treated as a nullity. It is true the unsuccessful candidates themselves are not the petitioners in the present case; but it must be borne in mind that the petitioners are petitioners in the interest of those candidates; that at the time when the resignation took place, and the sitting members were declared duly elected, all parties acquiesced, and the petitioners made no objection to such a course; neither did they propose a fresh candidate, or call on the sheriffs to adjourn the poll in order that such a step might be taken. They must, therefore, be taken to have acquiesced in the resignation of the candidates. But after these parties have themselves voluntarily abandoned the contest, while there was yet ample time for every voter to poll, without applying to the magistrates for assistance, without attempting to take any steps for protecting their voters or for bringing them up to the poll, without even waiting to see whether on the second day there would be any breach of the peace at all—the probability being that after the first ebullition of feeling had subsided, no further disturbance would take place, and the proper presumption being that no breach of the law would be committed—it would be too much to expect that, under these circumstances, the Committee should treat this return as a nullity, and unseat the sitting members, who have not been in the slightest degree implicated in any improper transactions. With respect to the allegation of the petition, that owing to the disturbance the qualification-oath could not be tendered to Mr. Bulwer, the fact has been entirely disproved

by the evidence of the petitioners themselves. Notwithstanding the statements of the witnesses of the petitioners, it must be manifest to the Committee, that in the latter part of the day the voters in the interest of the other party had free access to the hustings. The state of the poll book is of itself irresistibly conclusive upon that point; and the witnesses of the sitting members will fully establish, that after the first disturbance was over, tranquillity was gradually restored, and any voter of ordinary courage might have gone up to poll. If so there is an end of the case. It is not sufficient to avoid an election that a temporary interruption may have taken place, if order has been afterwards re-established, unless it can be shown that the irregularity has had the effect of preventing the real sense of the constituency from being taken. There is no pretence for saying that such was the case here. Order having been restored, there was still abundant time for every voter to poll, and it cannot therefore be said that the sense of the constituency was prevented from being taken. But the truth is, that the sense of the constituency was fully taken. It will be shown that the sitting members have polled a majority of the actual voters. If so, even if it could be proved that voters had been prevented from exercising their franchise, the Committee would not set aside the election, merely that certain voters might have an opportunity of recording their votes. In a former case of Coventry,* when the present candidate, Mr. Fyler, was returned, and Mr. Ellice, the now sitting member, was a petitioner, it was proved that riots existed during the whole time of the polling, that the clothes of the voters were torn from their backs and thrown upon the hustings till the roof was covered with them, and that many of the voters were severely beaten; but as it was shown from the number of votes polled that the election was not affected by these circumstances, the return was decided to be good. The Committee will consider the case with reference to this principle, even assuming

* Printed Minutes, March, 1827; and see *post*, note (A.).

that they should be of opinion that it would have been expedient that the sheriffs at any period of the day should have adjourned the poll. But the truth is that the sheriffs were right in the course they pursued. After the first short conflict was over, the compartments continued to be filled with voters, and the polling went on uninterruptedly; while that was the case, the sheriffs were fully justified in refusing to adjourn. Finally, it should be observed, that the petitioners are not entitled to any very favourable consideration at the hands of the Committee, inasmuch as they appear here as the organs of a party who, upon their own showing, had recourse to the hiring of strangers and ruffians, whom they introduced among the electors of Coventry; whereas, on the other hand, it will be shown that the sitting members did all in their power to preserve the public peace, and secure the freedom of election.

Evidence of the sitting members.

After the foregoing argument, the counsel for the sitting members were proceeding to call witnesses as to the actual state of the numbers on the register, and were about to show that certain voters on the register had died since the period of registration, when the evidence was objected to on behalf of the petitioners.

Evidence as to the state of the register objected to.

Mr. *Crowder*, in support of the objection.—The evidence cannot be received without going into a scrutiny; for if the sitting members should be permitted to adopt this course, the petitioner must have an opportunity of scrutinising the votes of the sitting members; otherwise any inference which the Committee might draw from a comparison of the numbers on the poll with those on the register, must necessarily be erroneous. But inasmuch as no objections to these votes have been taken before the revising barrister, a scrutiny of the votes cannot now be gone into before the Committee. If the sitting members can go into an analysis of the register, the petitioners may also go into the poll books, and show, as is in fact the case, that many voters have polled twice over in favour of the sitting members.

Mr. *Harrison*, contrà.—It is one of the allegations of the petition, that the sitting members had not polled a majority of the votes. That alone is conclusive as to the admissibility of the evidence. The petitioners having inserted a certain fact as an allegation in their petition, it must necessarily be open to the sitting members to negative that fact in evidence. In the former Coventry case,* the Committee allowed evidence to be given that a majority of votes had actually been polled, and being satisfied that such was the fact, they declared the sitting members duly elected.

Mr. *Crowder*, in reply, observed, that in the former Coventry case there had been no express decision on the point in question, the evidence not having been then objected to. He admitted that it was open to the sitting members to show that there was a majority in their favour, but insisted that such a majority must be calculated on the register as it stood, it not being open to them to go into a scrutiny of the votes on the register.

The Committee declared themselves of opinion, that in the present stage of the proceedings, the counsel for the sitting members ought not to go into evidence as to the deaths and other disqualifications of parties, whose names were on the register.† The counsel were also

* Printed Minutes, 1827, Pearman's evidence.

† The Committee had previously come to a similar resolution, on the counsel for the sitting members attempting to extract the same facts in cross-examination of the petitioner's witnesses. It being now urged that the Committee had already decided that the course of examination could not be pursued, the Committee intimated that they had only decided that the evidence should not be gone into at that stage of the case. It is obvious, therefore, that by their present resolution they meant to leave the question still open, but were anxious, in the first instance, to confine the counsel for the sitting members to prove that the poll was unobstructed towards the latter part of the day. It was manifest that they all along considered this fact as decisive of the case; and it is probable that they went into evidence of the communications made by the sitting members to the mayor, and subsequently proceeded with the examination of that officer, rather with a view to ascertain whether it might be necessary to make a special report as to the conduct of the sheriffs or the magistrates, than with any reference to the merits of the election.

informed, that the Committee considered that it would be desirable that the counsel for the sitting members should first direct their evidence to show, that the poll was unobstructed towards the latter part of the day.

Counsel for the sitting members called on to show that the poll was unobstructed towards the latter part of the day.

After this intimation of the Committee, the counsel for the sitting members called several witnesses of great respectability, electors of Coventry, who deposed that after the conflict for the possession of the hustings had ceased, tranquillity was gradually restored; that after the first excitement was over, any person of ordinary courage might have gone up to poll; and that, especially in the latter part of the day, free access to the hustings was afforded to the voters of both parties.*

Several witnesses to this effect having been examined, it was suggested by the Committee, that if the counsel for the sitting members had any witnesses to prove the letters sent to the mayor, the Committee would wish to have them produced. The mayor of Coventry being then called, deposed, that on the evening of Sunday, the 9th December, he received two letters from Mr. Ellice, and one from Mr. Bulwer,† stating that information had been received that a large body of prize-fighters, and other persons of desperate character, had been engaged to take part in the election mobs on the ensuing day, and calling on the mayor and magistrates to take immediate and energetic measures for preserving the public peace. The letter of Mr. Bulwer also conveyed information that a number of persons of the description above mentioned had come to the Pack-Horse, Randal's house.

In this stage of the case the Committee proceeded with the examination of the mayor. From his evidence it appeared, that in addition to the warning conveyed by these letters, intimation of strangers having been brought into the city was given from other quarters, and that from forty to fifty of the inhabitants of the city had applied to the mayor, expressing their apprehension of

Evidence of the mayor.

* Printed Minutes, p. 203—227.

† These letters were produced in evidence before the Committee. Printed Minutes, p. 227, et seq.

serious disturbances. In consequence of these communications, the mayor summoned twelve leet constables, and remained at the police office during the whole of the night of the 9th. At the same time he gave directions that all the leet constables, to the number of fifty-four, should be summoned, and also that the pensioners of the city, the effective number of whom amounted to about a hundred, should attend as special constables. Of these the leet constables alone were armed with staves capable of being used as offensive weapons; the special constables were provided only with slight staves, which served rather as emblems of office than for any purpose of defence. The whole of this force was placed at the disposal of the sheriffs. On the 10th December, the day of polling, the mayor remained the whole day at the police office. During the course of that day, fourteen persons, who had been much beaten, were brought to the police office, but as the under-sheriff and the chief constable from time to time reported that the polling was going on quietly, and as the sheriffs did not call upon the mayor and magistrates for their co-operation, the latter did not consider it their province to interfere with what was going on in the immediate vicinity of the hustings. It further appeared that the leet constables and pensioners before mentioned constituted the whole constabulary force of the city which could be relied on at the time of an election, the inhabitants being either freemen or 10*l.* occupiers, and as such exempted from serving as special constables,* or consisting of that class of persons from whom disturbances were chiefly to be apprehended. According to the constitution of the corporation of Coventry, the magisterial functions are vested in the mayor and nine aldermen, whose jurisdiction extends over the city and for several miles round it, to the entire exclusion of the magistrates of the county. The sheriffs of the

* By 7 & 8 Geo. 4, c. 37, s. 6, no person having a right to vote shall be liable or compelled to serve as a special constable at or during any election, unless he shall consent so to act; and he shall not be liable to any fine, penalty or punishment, for refusing so to act.

city are not magistrates. It appeared from the statement of the mayor, that in consequence of a communication received by him from the office of the secretary of state, calling on the magistrates of Coventry to take measures for preserving the peace of the city, a letter was written to the sheriffs, expressing a perfect readiness on the part of the magistrates to co-operate with them in preserving the public peace, and securing the freedom of election. With the exception, however, of the application made at mid-day on the day of polling, for a reinforcement of constables, the sheriffs did not place themselves in communication with the mayor and magistrates, or take any measures for acting in concert with that body, or availing themselves of the offer of co-operation made by them.

This examination being completed, the counsel for the sitting member were asked by the Committee what was the nature of the remaining evidence they proposed to offer? In answer to this inquiry, Mr. Harrison stated that he was about to call witnesses to prove that the parties who commenced the disturbances were connected with the petitioners, and instigated by them. The Committee, after deliberating for some time, intimated to the counsel that they considered that it was already in evidence that strangers were in the rallies* on both sides, and that it did not appear to them of any importance to prove by whom the disturbances were commenced.† After this intimation from the Committee, the counsel for the sitting members closed their case.‡

It having been proved that riots had existed, and that order was afterwards restored;—held that it was immaterial to show by whom the disturbance was created.

Mr. *Crowder*, for the petitioners, in reply, began by contending that the negative testimony adduced on behalf

Argument for the petitioners, in reply.

* *Rallying* is a term given to a practice common at Coventry, which consists in the election parties parading the streets in large bodies.

† Printed Minutes, p. 244.

‡ The Committee appeared so perfectly satisfied with the testimony of the witnesses who spoke to the fact of the obstruction to the voters having ceased in the latter part of the day, and to consider that fact as so completely decisive of the case, that the reporter, who was to have summed up the evidence on behalf of the sitting members, thought it unnecessary to trouble the Committee with any observations whatsoever.

of the sitting members, as to the absence of all obstruction in the latter part of the day, could not preponderate against the positive testimony of the witnesses of the petitioners, that acts of violence to individuals, and general danger to the voters, had continued up to the close of the poll. But supposing that order had been restored, still after the scenes of riot and outrage which took place, it may reasonably be presumed that many voters would be deterred from voting by the fear of being exposed to similar ill-usage. It has, in fact, been proved that several voters were so deterred. Now, if voters have been deterred from exercising their franchise, either by actual violence or a well-grounded apprehension as to their personal safety, the Committee will not now stop to consider whether the votes of the electors still unpolled could, or could not, have influenced the return. In this case a majority of the electors on the register had not been polled, and it may be that the majority might eventually have been in favour of the unsuccessful candidates. But be that as it may, it is the undoubted privilege of each individual elector to give his vote for the candidate whom he prefers; and if voters have been deterred by force or fear from exercising their right, it cannot be said that a free election has been had. Besides, after the acts of violence which have been described in evidence, it is not unreasonable to infer that voters may have been induced by terror to vote contrary to their own wishes and intentions. It cannot, therefore, be concluded that the real sense of the constituency has been taken, and the Committee will do justice to the petitioners by setting aside the return. Neither can it be said that the petitioners are to be precluded from obtaining redress on account of the resignation of the other candidates, inasmuch as the petitioners could not have anticipated such a step, neither could they have prevented it. Finally, the Committee will take care to mark their sense of the conduct of the returning officers in not adjourning the poll, as they were bound by law to do, as well as in not taking any effec-

tive measures to afford protection and security to the voters.

The Committee resolved that the counsel for the petitioners should proceed with that part of the case which related to the qualification of Mr. Bulwer; thereby, of course, in effect deciding that no sufficient case had been made out upon the charge of riot, to invalidate the election.

Resolution as to the charge of riot.

Mr. *Harrison*, for the sitting member, took a preliminary objection to entering into this part of the case, on the ground that the petition contained no allegation which could entitle the petitioners to question the qualification of Mr. Bulwer. It is a well-established rule in the practice of election committees, that every allegation of a petition must be clear and distinct before a petitioner can be permitted to give evidence under it; every ground of complaint must distinctly appear, and be expressly charged.* Now in this petition there is no express allegation that the sitting member is not qualified to sit in Parliament. It alleges merely, that in consequence of tumult and riot the petitioners were prevented from tendering the qualification oath to the sitting member; and it then immediately goes on to aver that the petitioners believe that the sitting member had not the requisite qualification to be capable of sitting in the House. It is obvious that this averment is intended merely as an aggravation of the former complaint, and was necessary as expletive to the previous allegation; for if the sitting member had been properly qualified, it would have been no hardship on the petitioners that they were prevented from tendering the oath. The latter allegation must therefore be taken in connection with the preceding one, and cannot be considered such a specific and substantive charge as can entitle the petitioners to call in question the qualification of the sitting member. Proof that this is the true construction to be put on the language of the petition, will be found in the sentence which imme-

Case as to the qualification. Preliminary objection.

When a petition contained a charge of riots, and stated that, in consequence of such riots, the petitioners were prevented from tendering the qualification oath to the sitting member, and then went on to aver that the petitioners believed the sitting member was not duly qualified; held, that this was a sufficient allegation to entitle the petitioners to question the qualification.

* See Hands on Election Petitions, p. 2, and cases there cited.

diately follows. It goes on to state, that " by these and other undue, illegal, and corrupt means and practices on the part of the said Edward Ellice and the said H. L. Bulwer, the sense of the electors has not been legally and properly taken, and no due election had;" and it prays that the return may therefore be set aside. Now, from this language it is clear that the petitioners intended to involve both the sitting members in one common charge, which can only apply to the charge of riots, in respect of which the averment of the inability to tender the oath, and Mr. Bulwer's disqualification, was to operate as a matter of aggravation. It is obvious that want of qualification in the sitting member could not be included in the corrupt " means and practices" which prevented the sense of the electors from being taken. Lastly, it is to be observed, that in all precedents of petitions on the ground of want of qualification, the absence of the qualification is expressly stated, and immediately followed by an averment of the inability of the party to be returned, or to sit in Parliament. In this case there is no such distinct and express allegation.

Mr. *Crowder*, for the petitioners, submitted that the allegation was sufficiently distinct. The utmost extent to which the rule relative to the allegations of a petition could be carried was, that an allegation must be so distinctly framed as to give full and precise notice of the charge intended to be relied on. In the present case it was quite clear from the language of the petition, that the intention of the petitioners was to impugn the qualification of the sitting member; and it was obvious that the latter had had full notice of that intention. Besides, he himself had treated the allegation as sufficient, by delivering in the particulars of his qualification in conformity to the resolution of the House. Even assuming that the allegation was defective, the sitting member, by treating it as sufficient, must be taken to have waived the defect.

Mr. *Harrison*, in reply, submitted that Mr. Bulwer, in delivering in the particulars of his qualification, had

only acted *ex majore cautelâ*, and ought not to be prejudiced on that account.

The Committee determined that the allegation was sufficient to enable the counsel for the petitioners to proceed to question the qualification of Mr. Bulwer.

Declaration delivered to the House by sitting member.

The declaration of qualification delivered into the House by Mr. Bulwer, in conformity to the resolution of 1717, stated, that the estate in respect of which he was qualified to sit in Parliament, consisted of a rent charge of 310*l.* per annum, charged upon certain tenements in the parish of Pebmarsh, in the county of Essex, and possessed by him under a certain indenture bearing date the 4th December, 1832, made between Benjamin Giles King, Esq., of the one part, and the said H. L. Bulwer of the other; that the consideration of the said rent charge was 3000*l.*, paid by the said H. L. Bulwer to the said B. G. King; that the said indenture was executed by the said B. G. King, and that the witnesses present at the attesting the said execution, and the payment of the consideration money, were Thomas Nicholson and also John Dunning, of Youngsbury, in the county of Hertford, bailiff to the said B. G. King.

Where in the particulars of qualification the attesting witnesses were described as A. B. and C. D. of E. F.; held that parol evidence might be given to show that E. F. was the place of abode of A. B. as well as of C. D.

Mr. *Crowder* now submitted, that the above particulars of qualification were defective, inasmuch as the residence of one of the witnesses to the deed of rent-charge was therein omitted;* for the description of the witnesses being "Thomas Nicholson and also John Dunning, of Youngsbury," the place of residence must be taken to apply to the latter only, and the residence of the other witness was therefore not contained in the specification. Consequently the sitting member, not having complied with the resolution of the House, was not in a situation to maintain his qualification before the Committee.

Mr. *Harrison*, for the sitting member, contended, that the words "of Youngsbury" immediately following both names must be taken to apply to both, and that the in-

* See the resolution, *ante*, p. 6.

sertion of the word "also" would fully justify such a construction; and he submitted that the Committee ought to lean towards the most liberal construction which the words would admit of, in order to defeat an objection of so merely technical a nature. At all events, the effect of the words was ambiguous, and the sitting member was prepared to show that Youngsbury was the place of residence of the witness Nicholson at the time the indenture was executed. The Committee, if they had any doubt as to the effect of the description, would surely allow the ambiguity to be removed by parol evidence.

Mr. *Crowder*, in reply, insisted that the resolution of the House must be strictly enforced, and that if the Committee should be of opinion that the sitting member had omitted to comply with the resolution, they could have no alternative but to visit him with the consequences. To admit parol evidence to supply an omission in the particulars of the qualification, would be to frustrate the object of the resolution, which was to give to parties questioning the qualification of a sitting member an opportunity of inquiring into the reality of the qualification, by summoning the witnesses by whom the execution of the deeds, and the receipt of the consideration money, were alleged to have been witnessed.

The Committee decided that the counsel for the sitting member might prove the residence of Thomas Nicholson, the witness to the deed, to have been at Youngsbury.* Evidence was then given that such was the fact.

Held, that in a petition against a sitting member, on the ground of want of qualification, the burden of proof lay with the petitioners,

Notice having been given to the sitting member to produce the indenture, by which the rent charge was created, the same was put in; upon which the counsel for the petitioners called on the sitting member to prove the execution of the deed in the usual manner.

Mr. *Harrison* submitted that it was not incumbent on

* In the case of Dover, the Committee, even where no particulars of qualification had been given in at all, refused to unseat the member. See *post*.

the sitting member to prove the execution of the deed, the whole burden of proof lying with the petitioners. The sitting member having been returned, and having sworn to his qualification at the table of the House, must be taken primâ facie to be qualified. It was for the petitioners, who impugned the qualification, to disprove it —not for the sitting member, in the first instance, to prove it. The declaration of qualification required by the House was founded on this very principle, its only object being to point out to the parties questioning the qualification the nature of the property and the abode of the witnesses, all of which would be unnecessary if the sitting member were bound to make out his qualification in the first instance.

and that the execution of a deed by which the estate, in virtue of which the sitting member claimed to be qualified, had been conveyed to him, must be proved by the petitioners.

Mr. *Crowder*, on the other hand, insisted that it was incumbent on the sitting member to make out his qualification, as being matter peculiarly within his own knowledge; and submitted that the deed, which was the evidence of the qualification, must be proved by the sitting member in the same manner as any other deed produced by a party who wishes to avail himself of it in evidence.

The Chairman observed, that the question whether it lay with the sitting member to prove his qualification, or with the petitioners to disprove it, must depend entirely on precedent and practice, and called on Mr. Harrison to state what, in his experience, had been the practice in cases of this kind. Mr. Harrison having stated that the practice had invariably been that the petitioners should disprove the qualification, and not that the sitting member should prove it, the counsel for the petitioners were called on by the Committee to make out their case against the qualification. It was then admitted that the petitioners were not prepared to prove the execution of the indenture, but, on the counsel for the petitioners suggesting that they had been put to considerable difficulty, in consequence of not being able to find Mr. King, the grantor of the rent charge, to serve him with a Speaker's warrant, to procure his attendance as a witness, and

that they had reason to believe that he was purposely keeping out of the way, in order to avoid being served; the Committee informed the counsel that they would receive evidence to show that Mr. King had absented himself in the manner suggested.

A witness was then called, who stated that he had twice been to inquire for Mr. King at his house at Youngsbury, and had also several times inquired at his chambers at the Albany, but without being able to procure any tidings of him. It appeared, however, on cross-examination, that the witness had not commenced his search till the day previous to the first sitting of the Committee, and that the witness, on inquiring at the house of the sister-in-law of Mr. King, in London, had been informed by her that she believed that he had gone to Calais.* After this the witness made no farther search. It appeared, also, that no summons to attend had been served on the attesting witness Dunning, though the last witness had seen him, and might have served him if the petitioners had thought fit. The Committee were unanimously of opinion that there was nothing to warrant the inference that Mr. King had purposely absented himself to avoid being served with the summons, and directed the counsel for the petitioners to proceed with their case.

The will of a Mr. Giles, under which Mr. King took the property upon which the rent charge was secured, was then put in, for the purpose of showing that Mr. King took the property in trust for a specific purpose, and had, therefore, no power to charge the estate with the rent charge in question.

The Committee, however, without calling on the counsel for the sitting member to address them in support of the qualification, expressed themselves decidedly of opinion that the grantor had an absolute interest in.

* One of the members of the Committee stated that he had himself seen Mr. King a few days before at the Alfred Club, which he was in the habit of frequenting, previous to his departure for Calais.

the property, and had power to grant the rent charge in question.*

The counsel for the petitioners having closed their case, the Committee declared their opinion that the case against the qualification had not been made out.

Case against the qualification held not to have been made out.

Incidental points:—

One of the sheriffs of the city of Coventry having been called to prove the poll, and examined as to the receipt of two protests, one on the part of the candidates Messrs. Fyler and Thomas, against the nomination proceeding during the disturbance on the 8th, and another of two voters demanding an adjournment of the poll on the 10th, the counsel for the sitting members claimed a right to cross-examine the witness, and were proceeding to inquire as to whether the polling proceeded uninterruptedly during the whole day, when the examination was objected to on two grounds; firstly, that the witness having been called as returning officer merely for the purpose of proving the poll, it was not competent to the counsel for the sitting members to cross-examine him generally; and secondly, that as the petition contained a charge against the sheriff, the latter being a party inculpated could not be allowed to give evidence which might have the effect of exculpating himself.

Where a petition contained a charge against a returning officer, held, that the latter, being called to produce the poll, and to prove the delivery of certain protests, might be examined as to the general proceedings of the election.

Mr. *Cockburn* in support of the evidence submitted, that by the modern practice of election committees it was open to the counsel for a sitting member to cross-examine a witness called to produce the poll; but that at all events, inasmuch as in the present case the counsel for the petitioners had not confined the examination of the witness to the proof of the poll, but had proceeded to examine him respecting the protests, the other side had a right to consider him as a general witness and to cross-examine him as to all matters connected with the present inquiry. He further submitted, that the same argument would apply to the second objection, and urged the inexpe-

* The point in question related entirely to the law of real property, and was wholly unconnected with the law of election; further details have therefore been omitted.

diency of permitting the mere insertion of a charge against an individual in a petition, to incapacitate him as a witness, inasmuch as it would then be easy, by adopting that course, to exclude the testimony of the most valuable witness. In the cases of Worcester* and Downton,† committees had allowed returning officers to be examined as witnesses, though criminally charged in the petition.‡

The Committee decided that the counsel for the sitting member might proceed with the cross-examination, at the same time cautioning the witness that he need not answer any questions which might criminate himself.§

Under a petition on the ground of riot, held, that evidence was admissible to show that persons had been employed to intimidate voters, without its being shown that the party employing them was connected with the sitting members.

A witness being called on the part of the petitioners to show that strangers had been employed by one Randal to ill-treat and intimidate the voters in the interest opposed to the sitting members, it was objected by the counsel for the sitting members that evidence could not be admitted until it had been shown that Randal was connected with and had acted by the authority of the sitting members. On the other side it was answered, that it was not essential to the purpose of the petitioners to show that the violence or intimidation had been connected with the sitting members; it was enough that such violence had taken place, and immaterial by whom it had been instigated. It was therefore open to the petitioners to show that persons had been employed for this purpose, without showing that the parties employing them had acted by the authority of the sitting members.

The Committee held that the evidence was admissible, independently of any connection with the sitting member.

The Committee finally resolved that the sitting members were duly elected, and that neither the petition nor the opposition to it were frivolous or vexatious.

* 3 Doug. 275. † 1 Peck. 340.

‡ In the case of Cardigan, 3 Doug. 228, the committee refused to allow a returning officer thus circumstanced to be examined; and in the Sudbury case, Philipps, 142, the committee determined that the returning officer whom, on his producing the poll, it was proposed to examine generally as to the proceedings of the election, should not be examined at that stage of the case; and it does not appear that he was afterwards recalled.

§ Printed Minutes, p. 7.

The Chairman also informed the House that the Committee had directed him to report the following resolutions to the House:— Resolutions of the Committee.

"That it appears to this Committee, that during the late election for members to serve in Parliament for the city and county of Coventry, riotous and tumultuous proceedings took place in the said city, and that serious outrages and assaults were committed on the persons of several electors and others during the election. Special resolutions.

"That at the late election the sheriffs of the city of Coventry caused to be erected only one booth, divided into ten compartments, for taking the poll at such elections.

"That it would have been expedient to have erected different booths in several places for taking the poll at the said election; and that, owing to the want of such an arrangement, great opportunity was given for riot and disturbance.

"That the magistrates of the city of Coventry have an exclusive jurisdiction within the said city, and the county of the said city.

"That although disturbances were apprehended at the late election for members to serve in Parliament for the city of Coventry, no adequate or effectual measures were adopted for preserving the peace of the city or protecting the persons of the electors from violence during the said election.

"That the conduct of the sheriffs of the city of Coventry was highly culpable, in not taking sufficiently prompt and efficient measures for securing order and regularity during the late election."*

The minutes in this case were laid before the House on the 4th April, and ordered to be printed.†

* See note (B.) on the next page.

† The editors feel it right to observe, that, owing probably to the great press of business which prevailed while these proceedings were going on, (there being at the same time no less than nine election Committees sitting,) a few inaccuracies will be found in the printed minutes of the evidence and proceedings of the Committee in this case. The reporter having been counsel in the case, the accuracy of the report here given may be relied on.

NOTES.

(A.) A report of the case of Coventry, referred to by Mr. Harrison, will be found in the Appendix to this work.

The case of Exeter, 6th Aug. 1689, (16 Journ. 254,) is an authority to show that a riot at an election must amount to an actual interruption of the proceedings, in order to make the election void. In that case the evidence went to show that one man was knocked down, and that if any person cried out against the sitting member, the butchers cried out "knock him down." The Committee determined that the sitting member was duly elected. It should, however, be stated, that evidence was adduced by the sitting member to show that the election was a peaceable one. See 1 Roe on Elections, p. 336.

The following are cases in which elections have been set aside on the ground of riots:—Pontefract, 1624, 1 Journ. 797; Glanville, 143; Southwark, 1702, 14 Journ. 24; Coventry, 1706, 15 Journ. 278; Westminster, 1722, 20 Journ. 53; Coventry, 1722, 20 Journ. 60; Coventry, 1736, 22 Journ. 819; Westminster, 1741, 24 Journ. 37; Pontefract, 32 Journ. 68; Nottingham, 1803, 1 Peck. 77. See 1 Roe on Elections, 334.

(B.) A motion was afterwards made in the House, that the sheriffs of Coventry should attend at the bar of the House. An election for the city of Coventry having, however, taken place in the interval between the report of the Committee and the date of the motion, at which the proceedings had been peaceable and uninterrupted, and the Chairman of the Committee having stated to the House that the Report of the Committee had already had the effect of preventing the recurrence of similar irregularities, the motion was negatived by a majority of 65 to 23.

CASE XIV.

BOROUGH OF RIPON.

The Committee was chosen on the 26th March, 1833, and consisted of the following members.

Lord Cavendish, (Chairman,) *North Derbyshire.*

George Grote, Esq. *London.*	Lewis Fenton, Esq. *Huddersfield.*
H. G. Ward, Esq. *St. Alban's.*	John Gully, Esq. *Pontefract.*
George F. Heneage, Esq. *Lincoln.*	Col. Maberly, *Chatham.*
W. Congreve Russell, Esq. *East Worcestershire.*	Sir Richard Keane, *Waterford County.*
George Evans, Esq. *Dublin County.*	Fred. Paget, Esq. *Beaumaris.*

Petitioners—Electors.

Sitting Members—Thomas Kitchingman Staveley and Joshua Samuel Crompton, Esquires.

Counsel for the Petitioners—Mr. Harrison, Mr. Follett, and Mr. Rogers.

Agents—Messrs. Henderson and St. John.

Counsel for the Sitting Members—Mr. Serjt. Merewether and Mr. Wood.

Agents—Messrs. Vizard and Leman.

Petition.*

THE Petition stated, that at the last election the sitting members, and Major General Sir James Charles Dalbiac, and William Markham, Esq. were candidates. It complained that the names of persons who voted for the sitting members were improperly inserted, or improperly retained on the register of voters, in consequence of the

Voters improperly inserted and retained on, and omitted from, the register.

* 19th Feb. Appendix to Votes, p. 61.

decisions of the revising barrister;—that the names of many others who tendered their votes for Sir Charles Dalbiac and Mr. Markham, were improperly omitted by the barrister;—and that many persons who voted for the sitting members, and whose names had been retained on the register of voters, had become incapacitated to vote since the making of the lists. It alleged, that by these means a colourable majority appeared for the sitting members, whereas Sir Charles Dalbiac and Wm. Markham, Esq. had the legal majority, and ought to have been returned; and it prayed that the return might be amended accordingly. There were other allegations in the petition relating to violence and intimidation exercised on the voters, but these were not proceeded in, and the case became one of mere scrutiny. The points discussed all related to the new franchise established by the Reform Act.

Prayer.

The numbers on the poll were, for each of the sitting members, 168; for Sir Charles Dalbiac, 162; for Mr. Markham, 159. The number of voters on the register amounted to 340.

Snowden's vote.

When the revising barrister had refused to allow a vote to be questioned, in consequence of the notice of objection not containing the statement of the objector's place of abode:—Held, that the discussion upon the notice was sufficient to bring the vote within the jurisdiction of the Committee.

Previous to entering upon the first vote objected to, a preliminary objection was taken by the counsel for the sitting members, to the discussion of this as well as of several other votes similarly circumstanced, on the ground that there had been no decision of the revising barrister respecting them. It appeared that at the period of registration, notices of objection to the voters had been served upon the overseers, but the statement of the objector's place of abode was therein omitted. The barrister held that such notices of objection were defective, and refused to allow the votes to be gone into.

Mr. Serjt. *Merewether*, in support of the objection, repeated the arguments which have been before stated in the cases of Petersfield* and Bedford.† In addition to the cases under the Annuity Act, referred to in the Bed-

* *Ante*, p. 32. † *Ante*, p. 45.

ford case, he cited the cases of Metcalf v. Bowes,* and Doe v. Bromley.† He relied also on the decision of the Committee in the Bedford case, in which, after deliberate argument, the Committee determined that the notices were invalid, and subsequently held that the votes could not be gone into.

Mr. *Harrison*, for the petitioners, argued as in the Bedford case, and further cited the case of Philipps v. Const.‡ In answer to the authority of the Bedford case, he cited that of Petersfield,§ in which the Committee, under the same circumstances, decided that the votes might be gone into.

The Committee resolved that the counsel for the petitioners should be at liberty to proceed with the votes in question. March 27.

On the subsequent day, the Committee on meeting informed the counsel that they had come to the following resolution:— March 28.

"That the Committee, in their decision of yesterday, are not to be understood as admitting the validity of a notice of objection given without specification of the place of abode of the objector; but inasmuch as the vote of George Snowden, notwithstanding this omission in the notice of objection, did actually become matter of discussion before the revising barrister, the Committee are of opinion that this circumstance suffices to bring it within their jurisdiction, without determining whether the notice of objection on which the overseer or barrister acted, was or was not in perfect form and order."‖ Explanatory resolution as to notices of objection.

The vote of George Snowden was then proceeded with. The name upon the poll stood thus—"George Snowden, house and yard, Bondgate Green." It was stated by the counsel for the petitioners, that the ground of objection to this vote was, that the voter was not rated.

Mr. *Wood*, for the sitting members, took a preliminary objection to the question of rating being gone into, on Held, that it was open to the Committee to

* 5 B. & C. 258. † 6 D. & R. 292. ‡ 3 Russ. 267.
§ *Ante*, p. 34. ‖ See *post*, note (A).

Answer evidence against a vote upon a different ground of objection to that taken before the revising barrister.

the ground that the want of rating was not made a matter of objection before the barrister, the question of occupancy having been alone submitted to his decision. He contended that inasmuch as it was now fully established that the jurisdiction of Committees was of an appellate character, and confined to those cases only in which there had been a decision of the barrister, it would only be giving effect to that principle to hold that the appeal must be confined to those matters which had been made the subject of the barrister's decision. It could not be said that the name had been inserted or retained on the register in consequence of the decision of the barrister, if the ground on which the vote was liable to objection had never been submitted to him, or formed the subject-matter of his consideration.

Mr. Rogers, in answer to the objection, besides arguing that the words of the 60th section of the Reform Act were general, giving an appeal to Committees in all cases where there had been a decision of the barrister, without any such limitation as that now contended for, submitted that the present question had already been incidentally determined by the Committee, inasmuch as it having already been decided that a discussion before the barrister, even upon the validity of the notice of objection, was sufficient to give jurisdiction to the Committee, it necessarily followed that a discussion upon any one ground of objection must be attended with similar consequences.

The Committee resolved that it was competent to hear evidence as to whether George Snowden was rated or not.*

The rate book was then put in; it contained the following entry:

Owner.	Occupier.	Parcels.
Proprietors of Ripon Navigation.	Mr. Alderman Farrer pays.	George Snowden's coal yard.

* In the New Sarum case (*post*) the Committee required that it should

On the other hand it was pointed out by the counsel for the sitting members, that in a subsequent part of the rate-book, George Snowden was also rated as occupier of a house and yard, likewise in Bondgate Green, of which a Mr. Oxley was the owner.

The counsel for the petitioners then proposed to show that the latter premises were not of sufficient value to entitle the occupier to vote.

The counsel for the sitting members objected to this evidence, inasmuch as the question of value had formed no part of the grounds of objection stated by the counsel for the petitioners in their opening.

The Committee, however, after hearing Mr. Rogers in answer, determined that they would permit the counsel for the petitioners to produce evidence as to the value of the premises for which George Snowden was rated.

After this, Mr. Oxley being called, proved that the premises in question were not of above 7*l.* annual value. It therefore became necessary to consider whether the former entry in the rate book, in respect of the coal yard, (on which it appeared that a small building was erected,) was a sufficient rating of the voter.

The counsel for the sitting members proposed to call the assistant overseer, to show that in point of fact it was the voter whom it had been intended to rate under the entry in question; but the examination was objected to by the counsel for the petitioners, on the ground that the rate book was conclusive as to the fact of a party being rated.

Where the entry in the rate book was "occupier A. B.; parcels, C. D.'s coal yard:"—Held, that the rate book was conclusive, and that parol evidence could not be given to show that C. D. was intended to be rated; held also, that this was not a sufficient rating of C. D. within the meaning of the 27th section of the Reform Act.

Mr. *Wood*, in answer to the objection, contended that though the rate book, if clear and unambiguous, might be conclusive as to the fact of rating, yet that as the entry in the present case was ambiguous, he was entitled

be shown what was the subject of discussion before the barrister, and refused to allow an objection not taken before the barrister to be taken before them; Burfoot's case. And in the Clonmell case (*post*) the Committee refused to receive the evidence of witnesses who had not been examined before the barrister.

to call evidence to explain it. If so, the assistant overseer, who prepared the book, would be the best and most competent witness for that purpose.

Mr. *Rogers*, in reply, contended that the rate book must be conclusive, inasmuch as it was the sole criterion of the liability of the party to have the rate enforced against him by legal proceedings, without which it could not be said that he was rated. The rate could only be levied by distress against the party actually inserted on the rate-book as occupier. If one person were entered as occupier, it would not be open to the overseers to enforce the rate against another, notwithstanding the latter might be the party whom they had intended to rate. The rate book must therefore be taken to be conclusive as to the fact of the rating, and if so, evidence could not be admitted to control or explain it.

The Committee determined that "the rate book on this question must be received as conclusive evidence." And they further resolved, that "George Snowden is not rated with respect to the premises of which Alderman Farrer appears rated as occupier."

March 28, 29. Casey's case. Where the owner of a house having an outer door opening to the street from a passage which ran through the house into a garden, had let off an upper and a lower room on one side of the passage, and two similar rooms at the back of the house, keeping the rooms on the other side of the passage for himself, the different sets of rooms having no internal communication with

The next case entered upon was that of Robert Casey. Two grounds of objection were taken to this vote; 1st, that the voter was not in the occupation of the entire premises in respect of which he voted; 2d, that the value of the premises was insufficient. The evidence adduced on the first point was as follows. It appeared that Casey was the owner of a house, part of which he had let to tenants, keeping the other part in his own immediate occupation. The house had an outer door fronting the street, and opening into a passage, which led through the house to the garden. On each side of the passage was an upper and lower room, communicating with each other by an inner staircase, and with the passage by a door. The rooms on the right hand of the passage were occupied by Casey himself, those on the left were let to a tenant named Knaggs, who had furnished them himself. Two other rooms at the back

of the house, the door of which rooms opened into the garden, were let to another tenant named Mariner. There was no communication whatever between the different sets of rooms except by means of the passage; in all other respects they were entirely separate. Each occupier had the exclusive use of his own door, and kept the key. The street door was seldom shut, except at night, when it was fastened by a bolt. It was fastened sometimes by the voter, and sometimes by the tenants. A right of common, now extinguished, had been attached to the premises as to an entire ancient tenement. At the time when they were sold to Casey they were sold in one lot, but in the particulars of sale they were described as three tenements. It appeared also that Casey was rated for the premises as for three distinct tenements.

one another, and communicating with the rest of the house only by means of the passage: Held, that he still continued in the occupation of the whole within the meaning of the 27th sect. of the Reform Act.

Mr. *Rogers* for the petitioners:—There has not been a sufficient occupation of the premises by the voter within the meaning of the 27th section of the Reform Act. The doors of the tenants, Knaggs and Mariner, must be taken to be outer doors; they had the sole control of their doors, and their premises had separate staircases; in short they had in every respect the character of an exclusive occupation. No conclusion favourable to the occupation of the voter can be drawn from the circumstance of a right of common having been annexed to these premises as an undivided tenement. It only goes to show that they formed originally but one tenement; but it is obvious that they have since been occupied as separate tenements. They were so described in the particulars of sale, and the voter has been rated for them as for three distinct tenements. At all events it cannot be said that the voter had the exclusive use of the outer door, which was common to the tenants as well as himself. If so, the Cirencester case * is conclusive against the vote. In that case it was

* 2 Fraser, 449.

resolved "that no person can be deemed a householder who does not possess an exclusive right to the use of the outer door; although, by taking lodgers, he may have relinquished for a time the exercise of that exclusive right."

Mr. Wood in support of the vote cited the case of Brunwin* as having overruled the decision in the Cirencester case. There a house was occupied by several persons. There was but one staircase, and but one outer door; yet the voter was held entitled to vote.—The case of the King against North Collingham† was also an authority in favour of the vote: there the pauper had let an unfurnished room to a lodger: the room communicated with the part belonging to the house by an outer door, and with the adjoining rooms of the house by an inner door; of the latter the lodger kept the keys. There was another outer door to the house. The pauper was assessed and rated for the whole. Under these circumstances it was held, that the house continued to be the separate and distinct dwelling-house of the pauper within the meaning of the 59 Geo. 3. c. 12.

The Committee resolved "that Robert Casey was in the sole occupation of the whole of the premises."

Evidence as to value.

The question of value was then gone into. The evidence upon this head was of the most conflicting description. On the part of the petitioners two surveyors were called, who reported that the extreme value of the above premises, including a garden and stable, was 5*l.* 5*s.* per annum. Another surveyor considered the value of the premises to be 5*l.* 0*s.* exclusive of taxes and rates, but made a deduction of 14*s.* 6*d.* a year for repairs. Mr. Farrer, a banker and alderman of Ripon, who on several occasions had been appointed by the vestry to value the property in the town for the purpose of assessing the poor's-rate and county-rate, and who in the year 1828, when the tithes of the leasehold property

* Minutes of Evidence. † 1 B. & C. 578.

in the neighbourhood of Ripon,—which had previously belonged to a Mrs. Lawrence, and had been assessed to her in one sum, were sold by her to the proprietors, was employed to apportion the tithes among them—corroborated the testimony of the first witnesses, and stated that according to the principles upon which he had always proceeded in valuing property in Ripon, the extreme annual value of these premises was 8*l.* 7*s.* It was likewise stated, that the house was situated in one of the worst neighbourhoods of the town. On the part of the sitting members, Mr. Williamson, a partner of Mr. Farrer, and whose father was possessed of considerable property in the town, and who had assisted his brothers when overseers in collecting the rates, and had also himself been a surveyor of highways and collector and assessor of taxes, by comparison with other cottages of his own, estimated the value of the premises at 10*l.* or 10 guineas a-year, the occupier paying all rates and taxes. Another witness, a surveyor of York, of extensive practice in his profession, and employed as surveyor to the buildings of Earl Fitzwilliam in England and Ireland, and to those of Earl Cowper at Leeds, and who had been sent to Ripon to value certain properties for the purposes of the present inquiry, stated, that he had been informed that the premises in question had been let five years before for 10 guineas a-year, and that he considered them as still amply worth that sum. It appeared that Casey had purchased the property a few years before, at a sum which it was agreed was about 120*l.*, and had in some degree improved the premises by building a garden wall about seven or eight yards long. On the other hand, it was stated that he had deteriorated the value of the premises by converting the part which he himself occupied into a lodging house for trampers.

The Committee decided that the premises occupied by Casey were of the clear annual value of 10*l.**

* The question of value here discussed being one of fact alone, it would not have been thought worth while to enter thus into detail respecting it, did

[illegible]

The case of [illegible] was another case of disputed occupation. The voter being the tenant of a house let into lodgings, the rent of the house to an under tenant named Mallam, a party who [illegible] to himself the room. It afterwards appeared that a bed of Mallam's in the same house at a weekly rent of 1s. 6d. The voter continued to be assessed to the rates and taxes for the premises. But by the terms of the tenancy Mallam had the use of such outbuildings. The house which Mallam in Mallam was unfurnished, and the room in which the voter slept was furnished by Mallam. Mallam's wife washed the voter's linen, and cooked his victuals. The main entrance to the voter communicated with the street by an outer door, and with the house by a door opening into a passage belonging to the house. It appeared that Mallam having on one occasion fastened up the door leading from the shop to the passage, Mangle gave him a written notice to quit, alleging that the blocking up of the door was a violation of the original agreement. It was admitted that the value of the shop alone was under 10*l.* a-year.

Mr. Rogers for the petitioners.—It is clear upon the evidence that the voter had not the occupation of the entire premises. It is true that where a landlord lets off a part of a house and occupies the remainder himself, he may be considered in a legal point of view as occupying the whole; but in order that this should be the case, it is essentially necessary that he should occupy the portion which he retains himself, in the character of inhabitant. Now it is clear that in this case, the shop not having been applied to the purposes of habitation, the voter cannot be said to have occupied the shop as an inha-

it not lead to the important remark, that in a case where the evidence was altogether conflicting and very evenly balanced, the witnesses on both sides being highly respectable, the Committee thought it right to decide in favour of the vote. It will be afterwards seen, that the counsel for the petitioners were induced to abandon their case from a conviction that the Committee had adopted this view of the question.

bitant. It is true the inhabited part of the premises which he had let to Mafham, but that was not as landlord, but in a totally different character, namely, that of tenant to Mafham; there was therefore no such inhabitancy as landlord as would make the occupation of the tenant his occupation in law.

Mr. *Wood* in support of the vote.—The argument on the other side would go to the extent of excluding from the exercise of the elective franchise every lodging-house keeper who lets off a portion of his premises. The voter here retained the exclusive right to part of the premises, and he continued to inhabit the house. In the eye of the law he still continued to be occupier, being answerable both for the rent and for the public burdens. Besides, the notice to quit, given upon Mafham's fastening up the shop door, shows that by the original agreement the voter was to retain the controul over the avenues of the shop. This case is stronger than Casey's,* for Casey had no such controul over his tenants as the voter had here, Casey being restricted to his own part of the house, while here the voter had access to the whole.

The Committee resolved "that George Mangle was in the legal occupation of the premises."

William Cundale's case. Declarations of a voter, adverse to his own right, negatived by other evidence.

The vote of William Cundale was objected to, on the ground that the voter was not in fact the occupying tenant of the premises. The only evidence relied on in opposition to the vote consisted of declarations made by the voter on two different occasions that he had no vote, his aunt, not himself, being the tenant. In support of the vote it was contended that this declaration of the voter originated in a misapprehension arising from the circumstance of his aunt, who lived with him, being rated for the premises; to prove which fact the rate-book was put in.† The landlord also being called, deposed that the voter William Cundale was in fact the tenant and

* *Ante*, p. 296.

† No objection was taken to the vote on the ground that the voter had not been rated.

[redacted] the rent, and that he had received two receipts for rent with the notice of November 1831, and May 1832, to be filled up at one time, to enable the voter to produce them before the revising barrister, if necessary.

The Committee resolved that Cumiskie was the occupying tenant of the premises in question, and that the vote was a good one.

At the following meeting of the Committee Mr. Rogers stated to the Committee that he was prepared in twenty-eight cases with evidence with respect to value, similar to that which he had tendered in Casey's case; but that having observed that the Committee, under the circumstances of conflicting evidence, had come to the conclusion of leaning in favour of the franchise, he considered it his duty no longer to persist in the scrutiny.

Sitting members declared duly elected.

The Committee resolved that the sitting members were duly elected; and that neither the petition nor the opposition to it were frivolous or vexatious.

NOTE.

(A.) The question as to the validity of notices of objection, in which the residence of the superior has been omitted, and the consequent jurisdiction of Committees upon votes thus objected to, has been now raised before three Committees, and in each case the decision has varied. In the Petersfield case (*ante*, p. 34.) the Committee resolved, generally, that the votes should be proceeded with, without specifying whether their decision proceeded upon the ground that the notices were sufficient in point of form, or upon the ground that the decision of the barrister, that the notices were invalid, was sufficient to give them jurisdiction over the vote. In the Bedford case (*ante*, p. 48,) the Committee determined that the notices were informal, and that the decision of the barrister was right, and they subsequently held that votes thus circumstanced could not be questioned before them. In the present case the Committee, as was stated in the text, at the same time that they expressly declared their intention to abstain from giving any opinion as to the formality of the notice, determined that the discussion before the barrister, on the subject of notice, was sufficient to bring the vote within the jurisdiction of the Committee. It will be at once perceived that the decision of the Petersfield Committee may be easily reconciled with that of the Ripon, by considering the decision in the former case to have proceeded, not on the ground that the decision of the barrister was wrong, but that his decision, even on a point of form, sufficed to bring the merits of the case within

the jurisdiction of the Committee. If this view of the case be adopted, neither of those decisions will be at variance with that of the Bedford on the question of the validity of the notices, and the decision of the Bedford Committee may consequently be considered as having decided that question. The superior cogency of the arguments advanced against the validity of these notices, together with the circumstance that the revising barristers were (with scarcely an exception) unanimous in holding them to be bad, affords an additional reason for adopting the view of the case here suggested. An ulterior question, however, remains, as to whether the decisions in the Petersfield and Ripon cases, on the subject of the jurisdiction of the Committee, are to preponderate over the decision of the Committee in the Bedford case. The following short train of reasoning is, with great deference, suggested, as leading to the conclusion that the preference should be given to the decision of the Bedford Committee. According to the construction put by Committees on the 60th section of the Reform Act, the jurisdiction of the House is limited to cases in which there has been a decision of the barrister. Now, according to that section, parties are alone enabled to question the correctness of the register, by showing that "in consequence of the decision of the revising barrister, names have been improperly retained on, or omitted from, the register." But if the barrister was right in holding the notice of objection to be insufficient under the act, it is clear that, as his jurisdiction is limited to cases in which the voters have been objected to in the manner mentioned by the act, he was right in not allowing the merits of the vote to be gone into. How, then, can it be said that the name of the voter has been *improperly* retained on the register, in which case alone the 60th section gives jurisdiction to the Committee?—Moreover, as an informal and insufficient notice is in law equivalent to no notice at all, how can it reasonably be concluded that the Committee should have jurisdiction in the one case if they have it not in the other? In addition to this reasoning it may be observed, that later Committees have leaned towards limiting the subject of discussion before them to the points discussed before the barrister, and decided on by him; the Committee in the New Sarum case having required it to be shown what was the subject of discussion before the barrister, and refused to allow an objection, not taken before him, to be taken before them; and the Clonmel Committee having gone so far as to refuse to allow witnesses to be examined who had not been examined before the revising barrister. See those cases *post*.

CASE XV.

CITY OF NEW SARUM.

THE Committee was chosen on Tuesday, April 30th, and consisted of the following members:

The Right Hon. Sir John Byng, Bart. (Chairman,) *Poole.*

Lord Viscount Milton, *Northamptonshire, North.*	John Philpotts, Esq. *Gloucester.*
Sir William Ingilby, Bart. *Lincolnshire, Parts of Lindsey.*	Hon. Richard Watson, *Canterbury.*
T. H. Cookes, Esq. *Worcestershire, East.*	Hon. C. C. Cavendish, *Sussex, East.*
A. Bannerman, Esq. *Aberdeen.*	Hon. E. Mostyn, *Flintshire.*
Robert H. Hurst, Esq. *Horsham.*	F. Fitzgerald, Esq. *Louth.*

Petitioner—Hon. Duncombe Pleydell Bouverie.

Sitting Member petitioned against—Wadham Wyndham, Esq.

Counsel for the Petitioner—Mr. Serjt. Ludlow, Mr. Serjt. Talfourd, and Mr. Stone.

Agent—Mr. Houseman.

Counsel for the Sitting Member—Mr. Harrison, Mr. Follett, Mr. Austin, and Mr. Slade.

Agent—Mr. Cobb.

Petition.

The petition stated, that at the last election of members to serve in parliament for the city of New Sarum, William Bird Brodie, Esq., Wadham Wyndham, Esq. and the Hon. D. P. Bouverie, were candidates, and that a poll having been demanded, the two former were returned as duly elected: that the said W. B. Brodie was duly elected, but that the said W. Wyndham was not: that the

names of divers persons were improperly omitted from the register of voters of the said city, and many improperly admitted to the same, in consequence of the decisions of the revising barrister—the points on which those decisions had been given being severally set out at length. Several other grounds of scrutiny, as personal incapacity incurred since the registration, and the like, were also enumerated: there were likewise charges of bribery and treating on the part of the sitting member Mr. Wadham Wyndham; and the petition concluded by praying that the election and return of Mr. Wadham Wyndham might be pronounced null and void, and that the petitioner should be declared duly elected.*

Names improperly inserted on, and omitted from, the register.

Mr. Serjeant *Ludlow*, for the petitioner, opened this as a case of scrutiny. At the close of the poll there appeared to be a majority of three in favour of Mr. Wyndham; but it would be seen that the several classes of electors enumerated in the petition had been prevented from giving their votes to the petitioner in consequence of the decisions of the revising barrister, partly on the merits and partly upon a preliminary objection taken to the form of some of the notices of claim; upon which last ground no less than sixteen individuals had been excluded from the register. As a due tender of each of these votes had, nevertheless, been made at the poll, according to the provisions of the Reform Act, it would be for the Committee to decide whether, in a case where these notices had been duly received, the claim duly published by the overseer and every opportunity had thus been given of sifting the validity of the qualification, the decision of the barrister, so entirely at variance as it was with the real merits of the question, could be supported. As to the charges of bribery and treating, it was not intended to press them generally, but only as they might be likely to affect particular votes. At the end of the first day's poll the majority was in favour of the

Case for the petitioner.

* For the details of this petition, given at length as a precedent, see Appendix, *post*.

[redacted]

[redacted]

[redacted]

supposed omission in respect to the time of this transaction, and also as to the dates of certain inspections of the poll by the agents of the different candidates; but the general authenticity of the poll having been deemed by the Committee sufficiently proved, the case proceeded.

James Smith's case. A notice of claim having been rejected as informal by the revising barrister; held, that the Committee would, nevertheless, go into the merits of the case, without requiring the notice of claim to be produced.

The vote of James Smith was described on the poll book of St. Martin's parish thus:—James Smith—qualification, house, Exeter street—tender for Captain Bouverie.

The revising barrister's list was then put in, having appended to it a list of persons claiming to have their names inserted in the list of persons entitled to vote in the election of members for the city of New Sarum. In this appended list the following entry appeared to have been struck out:—James Smith—qualification, house, Exeter street.

Mr. Serjeant *Ludlow* then proposed to call a witness to prove the qualification.

Mr. *Harrison*, for the sitting member, objected:—Before any witness can be called to that point, the notice of claim must first be put in. It is an indisputable proposition in election law, that where the name of a party appears on the poll, the presumption is, that he is qualified to be there; but that where the name does not appear on the poll, the party must begin by proving everything necessary to establish his right to be placed there. The name of James Smith, therefore, not appearing on the poll, save as a tender, it is incumbent upon the petitioner in this case to begin with the same proof which would have been first required before the barrister. Now, where the name of a voter has been omitted in the original list, the first foundation of any proceeding for substantiating his vote at the revision is the proof of his having given due notice of claim; and as the Committee is now sitting upon this vote as it were in the situation of the revising barrister, the first step requisite here is the production and proof of that notice. The overseer himself has no right to enter a claim for any one: the list of claimants therefore produced proves

nothing, unless the proper authority for entering those claims be first put in. The barrister, it will appear, struck this name off, because the notice was defective; the question therefore for the Committee will be, whether the barrister was right or wrong in so doing. The 60th section of the Reform Act gives Committees power to inquire into cases where votes have been admitted or rejected in consequence of the decision of the revising barrister; and three Committees have already decided that their jurisdiction in such matters must be held to be confined within that limit: it is that decision therefore which is the ground of inquiry; and here the decision was, that the notice was bad in point of form. The notice therefore must first be produced, since without it no case can be made out for the interference of the Committee.

Ludlow, Serjeant, contrà. The real question here at issue is the substantial right of this party to vote; for if sufficient publicity was given to this claim, and that too by the proper officer, the technical formality of the notice is a matter of very secondary consideration. One of the principal objects of the notice is, as in many other instances, to secure the proper attendance of the parties; and that in this case had been fully accomplished. It has been contended, and it may be admitted, that we are here in the same situation for this purpose as if we were before the revising barrister; but it is submitted that when the notice had been received and the claim duly published on the church door and acted on, the barrister himself had no right to go into the question of the validity of the notice. The duty of making the lists devolves entirely on the overseer; and should he omit a name, a remedy is afforded to the voter by the power given him to send in a claim. The overseer is then not simply to report these additional names to the barrister, but he is bound to make and publish another list: upon the publication of that second list, the notice has fully discharged its office; and the barrister is to look to the list

alone for the description and the qualification of the parties. That list then we have now produced, and we claim that the list, being in itself a sufficient notice, should also be considered a sufficient ground for our being admitted to go into evidence upon the case of James Smith.

Mr. *Harrison*, in reply.—Notices have already been the subject of considerable and most important discussion in three several Committees. In the Petersfield case,* the revising barrister had entertained a question as to the validity of a notice of objection, and the decision come to by him upon that point was deemed a sufficient ground to let the Committee into a further inquiry on the vote. In the Bedford case,† the barrister had decided against the validity of a similar notice, and that decision was reviewed and confirmed by the Committee. Lastly, in the Ripon case,‡ where there had been a similar decision, a discussion on the validity of the notice had preceded an inquiry into the merits of the case. In each of these instances the notice formed a very principal object of consideration, and in fact, in the present case, without the production of the notice, there would be no ground for going into the inquiry at all. It has been resolved, that the jurisdiction of the House, under the 60th section of the Reform Act, is limited to a review of the decision of the barrister. The overseer is only a ministerial officer to record the claim, but the claim itself is that which gave in the first instance to the barrister, and consequently now gives the Committee, jurisdiction, and that notice must be accordingly produced.

The Committee resolved that the counsel for the petitioner be allowed to enter into proof of the qualification of James Smith.

It was then proved that the voter had occupied as tenant, from May 1831, a house of the value of 14*l.* a year, in Exeter Street, in the parish of St. Martin, in

* James Cookson's case, Petersfield, *ante*, p. 32.

† Thomas Flight's case, Bedford, *ante*, p. 42.

‡ Ripon, *ante*, p. 291.

[illegible] the [illegible] and [illegible] that his rates had [illegible] and that he [illegible] not liable to any [illegible] rate.

Mr. [illegible] then [illegible] direction in proceeding further with the [illegible] against the nomination of the Bedford Committee, [illegible] and to go into the merits of the [illegible] on which the barrister's court had [illegible] of the [illegible] of [illegible] of a notice.* The barrister [illegible] that the notice of claim was [illegible] and that [illegible] he [illegible] that it [illegible] should stand in the [illegible] and, under those circumstances, be taken [illegible] a [illegible] [illegible] at all; and if so, the Committee [illegible] to [illegible].

[illegible] The Committee [illegible] their opinion that they had a right to go into the examination of the claim, and added that the next question was, whether that claimant appeared before the [illegible] barrister.

Mr. [illegible], the agent for the petitioner, then proved that a due endeavour to authenticate the claim before the [illegible] barrister; that all the claims were [illegible] at the same time, and that the question as to their [illegible] was first raised upon the notice of John [illegible] Humby and Smith; that was not actually discussed, but that an intimation was made to the barrister that his decision would be brought before a Committee of the House of Commons, and that it was understood that Smith's notice was to be taken to have been rejected upon the same ground as Humby's. The defect in the notice relied on in that case, was the omission of any [illegible] description of the qualification.

An overseer called only to produce a notice sworn and examined.

The overseers of St. Thomas's and St. Martin's were now called to produce the notices of claim of Humby and of Smith; upon which Mr. *Harrison* proposed to examine them, which was resisted by Mr. Serjt. *Ludlow*, on the ground that it is not necessary that a witness who only *produces documents* should be sworn.†

The Committee decided that the witness should be sworn, and might be examined.

* See Flight's case, Bedford, *ante*, p. 70. † Mr. Houseman.

The notices were then put in; they stated the qualification in each case to consist of a dwelling-house, and ran in the form numbered 4, in Schedule I. of the Reform Act, save that they contained no local description of the qualification; they were signed severally "Joseph Humby, place of abode High Street, Salisbury; James Smith, place of abode Exeter Street, Salisbury." It was also proved that James Smith tendered for Captain Bouverie.

Some doubt having been expressed as to what actually took place before the revising barristers, it was suggested by the counsel for the sitting member that Mr. Elliot (one of those gentlemen who happened to be present in the committee room) would have no objection to be examined.

A revising barrister examined by consent, protesting at the same time against its being drawn into a precedent.

Mr. Serjt. *Talfourd* expressed great disinclination to impose any such necessity on those gentlemen; but the Committee, without giving any opinion upon that point, stating nevertheless that it would be a great satisfaction to them to hear Mr. Elliott, that gentleman, protesting at the same time against this being drawn into a precedent, was sworn and examined. He stated that the case of James Smith was substantially the same as that of Joseph Humby, and in other respects corroborated the testimony of Mr. Houseman.

Talfourd, Serjt., in support of the vote.—It has now been sufficiently proved that the case of James Smith was brought before the revising barrister, and it has been also fully established, that upon the merits he was clearly entitled to have been placed upon the register; the occupation, the value, the rating, the payment, the residence, are all unquestionable; but then we are met with the objection which was raised before, namely, that the notice of claim was informal and insufficient. Now to this there are two answers:—first, that the overseer understood the notice and acted on it; and that even granting that it were informal, the fact of his having done so would be for all practical purposes sufficient: secondly, that the notice itself is a good and sufficient notice, according to the provisions of the act. In the first place, the only object

of giving a power of claim in boroughs, was to afford a remedy to any who might have been improperly omitted from the list published in the first instance. Another publication of a second list then ensues, and from the moment that second publication takes place, the notice of claim has fulfilled its duty; the claim from the beginning is a mere matter of information between the voter and the overseer, and if it be defective, the real injury which accrues to the voter is from the defective entry, which necessarily must be transcribed from it into the overseer's list; for that list is the record, and if the qualification be wrongly entered there in consequence of the incorrect notice, the error must be fatal; if, on the contrary, the entry upon it be correct, that is a sufficient notice to the whole world, and all has been done that can be required by the act. A notice of objection, several decisions in respect of which have been cited on the other side, is of a perfectly different character. The production of that notice before the barrister is most essential, in order to show that the person who actually appears to object to the vote is *bonâ fide* the person who signed, or is at least delegated by the person who signed the notice; for unless he be in this manner invested with the character as it were of a plaintiff, he has no right, under the act, to take an exception to his neighbour's vote. No part of that notice is transferred to the church door, and therefore the original must be produced; but a notice of claim is merely a sketch of the qualification to the overseer; the most material part is forthwith transcribed into the list, and from that moment notice has, in the words of the 48th section, been duly given, and provided only the list be correct, *cadit quæstio;* the duty of the barrister being to revise the list, and that only. Then as to the second point, the notice itself is in this case sufficient. It is true that there is no local description of the qualification inserted in the body of the notice, but the qualification itself is stated to be a dwelling-house, and the place of the voter's abode is subscribed in the margin, "James Smith, Exeter Street." Now

what inference from this could be more clear than that that dwelling-house was in Exeter Street? The effect of such a notice no one could mistake, and that is all that is required by the act; the 37th section does not provide that the very form given in Schedule I. should be observed, but expressly adds, or "to the like effect." Let it be taken that this section is not directory only, but imperative, still this notice was a notice to the like effect, and the best proof of that is, that the very effect desired was produced; the overseer understood and acted on it, and the qualification, with a correct description of its locality, was rightly published. Had it been otherwise, there is another section, the 79th, which especially provides that no inaccurate description in a notice shall render it invalid; but in point of fact the description was here substantially correct, and even in cases under the Annuity Act, where the law has been always very strictly interpreted, such a correctness in substance has always been deemed sufficient.*

Mr. *Harrison*, contrà.—The Reform Act contains certain provisions which parties omitted from the overseer's list must comply with before they can be admitted to be registered. Amongst others are those which make necessary a notice of claim. Now from the tenor of the act, and from the form of that notice as set out in the schedule, it is clear that the locality of the qualification may differ from the place of abode, since the latter is inserted to show that the voter lives within the required distance; thus in the present instance there might be very reasonable doubt whether the dwelling house in question were or were not in Exeter Street; nor could it even be said to be clear that it was actually in Salisbury. With all this uncertainty, nevertheless, about the case, an alteration has been made in transcribing the notice by the overseer, or rather, an actual omission has been supplied, for this was by no means such an inaccuracy as is contemplated in the 79th section of the act which has been cited; and it is submitted that such an abuse of his office by an over-

* See St. John v. Champney, 1 Bing. 77; Phillips v. Const, 3 Russ. 267.

seer is in itself a high offence. His duty in this matter was purely ministerial; namely, to copy the notice of claim, and to publish it. To tolerate in overseers a practice of introducing alterations at pleasure would be to put the whole constituency at their mercy. Next comes the duty of the barrister, and it is his business to revise the list: he is to correct, not the list of claimants, but the original list of the overseer, by adding from amongst the claimants all such as shall have been proved to him to be duly entitled, and that also only when, according to the 50th section, sufficient and formal notice shall have been duly given. Then as to the 79th section, on which much reliance has been placed, that provision applies to inaccurate descriptions, and defects of that kind only; not to such a case as this, which is one of absolute omission. The barrister here, therefore, had no alternative, and however great the hardship might appear upon individuals, his jurisdiction was actually excluded by the insufficiency of the notice.

It has been also stated, that the cases decided on the Annuity Act are in favour of the position contended for on the other side; but the fact is not so. Darwin *v.* Lincoln,* Smith *v.* Pritchard,† and Check *v.* Jefferies,‡ all of which were cited in the argument before the Bedford Committee,§ go to establish the principle, that where a form is prescribed by an act of parliament, that form must be substantially and faithfully observed. In the case of Taylor *v.* Fenwick,‖ a notice of action had been given by an attorney who lived at Durham, signed thus—"Given under my hand at Durham." This notice had been given pursuant to the provision in 24 Geo. 2, c. 44, for the protection of justices in certain actions, and the question was, whether the residence of the attorney was sufficiently designated as above. The Court held, that an express form having been given in the act, the residence at Durham could not be inferred from such a subscription as that stated. Upon the same

* 5 B. & Ald. 444. † Ibid. 747. ‡ 2 B. & Cres. 1.
§ See *ante*, p. 45. ‖ Cited in Lovelace *v.* Currie, 7 T. R. 635.

principle it cannot in the present case be inferred from the fact that the place of abode is entered "Exeter Street," that the house giving the qualification must necessarily have been situated there also. The case of Williams *v.* Burgess* was an action against a custom-house officer for breaking open a house to search for contraband goods, and the notice stating the plaintiff's intention to sue, ran thus; because "the defendant had, on the 22d of November, broken open the dwelling-house and warehouse of Thomas Williams, in Cable Street, in the parish of St. George in the East." Here, the action being against, and the notice being given to, the very person who had broken open the house, there could be no pretence that he was unacquainted with the residence of the plaintiff: the notice, however, was held insufficient, and Lawrence, J., in his judgment, gives as a reason, "that where an express document was required, nothing should be left to inferences; and here it was only by inference that it could be collected that the place of abode meant to be designated was, on the 22d of November, in Cable Street." The King *v.* Sheard† is another case in point, bearing upon notices of appeal as to overseers' accounts. The King *v.* the Justices of Oxfordshire‡ also decided, that where an act specifies that a notice shall contain certain particulars, and those particulars are omitted, such a notice cannot be acted on. The tenor then of all these authorities shows the view taken of this subject invariably by the courts of law. The positive provisions of the legislature must be adhered to, and where parties are in a difficulty from their own laches, they must abide the consequence. The error here is not merely technical, but is actually an error in substance: it is most material that a local description should be attached to the qualification, or the public can have no opportunity of making sufficient inquiry, and of sifting the rights of the several claimants. It will be most essential also to establish the principle, that overseers are for this

* 3 Taunt. 127. † 2 B. & C. 856. ‡ Ibid. 279.

purpose nothing more than ministerial officers, and that it is their business to transcribe, without prejudice or alteration, the claim as they receive it; and above all, a decision upon this point in favour of the sitting member will go materially to settle the practice before future revising barristers, who will thus have a further authority for pursuing a course which has hitherto been very generally adopted.

Ludlow, Serjt. in reply, contended, that the cases cited, although of great authority as to the inrolment of annuities, notices of actions against magistrates, and questions of overseers' accounts, were not in point in an instance like the present. The strictness observed with regard to the interpretation of the Annuity Acts had arisen from the leaning of the courts towards the prevention of frauds. With respect to notices of action against magistrates, there was a similar anxiety to prevent vexatious proceedings; and as to the King v. Sheard, the judgment in that case put the insufficiency of the notice entirely upon the ground of its not conveying any intimation at all of the real grounds of appeal. None of those objections would apply in the present case.

The Committee resolved unanimously, that the name of James Smith was improperly omitted from the register of voters for the city of New Sarum, and that his name be added to the poll in favour of the petitioner.

Charles Taylor's case. A disputed notice of claim being decided to be good, the Committee further require proof of the merits before the voter's name can be placed on the poll.

Upon the vote of *Charles Taylor*, Mr. Serjeant *Ludlow* stated, that he should now claim to go a step further. The notice in this case was the same as in the last, but that notice having been held to be sufficiently formal, he should now contend, that where a notice was thus decided by the Committee to be good, that was all that was wanting to the immediate establishment of the vote; and that as the voter had been ready to go into the merits, and prove every thing before the barrister, but had been stopped on the point of form, he should now, the form being held to be good, be immediately admitted to his franchise. This would be the only redress which the

Committee could accord to those who had been put to great trouble and expense in bringing their witnesses before the revising barrister, and yet had not been allowed to go into their case.

The Committee resolved, "that the course adopted in James Smith's case must be pursued in this case also." The vote was then withdrawn.

Joseph Humby's case.

In the case of *Joseph Humby*, Mr. Serjeant *Ludlow* proposed to examine the witness in support of his own vote.

A claimant who had presented himself at the barrister's court in support of his vote may be examined in support of his vote before a committee.

Mr. *Follett* objected, that this was contrary to the invariable practice of committees,* according to which no voter was ever allowed to be called either in support, or contradiction, of his own vote. But it is suggested that the case is altered since the passing of the Reform Act. Now the 75th section of that act expressly provides, that all usages and practices shall be retained which are not repealed by, or inconsistent with, that act. Heretofore the returning officer examined the voter as to his franchise, and then Committees of the House sat as a court of appeal from his judgment, but never examined the voter: so now the revising barrister has the same powers below, and committees will follow the same practice in reviewing his decisions. In the Longford case† every thing turned on the contradictions given to what the voter had sworn before the barrister, and yet the voter himself was not called, nor has there been any such attempt as the present during the session.

Ludlow, Serjt.—It must be admitted that the antient practice was not to examine the voter before a committee in support of his vote, though upon what principle that practice was founded, it is difficult to say. But here the point is different, and perfectly new; the question is whether, when the Reform Act gives the revising barrister an express power to examine the voter, and when the Committee has already decided that it is in the present

* Middlesex case, 2 Peck. 134. Great Grimsby case, 1 Peck. 75.

† *Ante*, p. 228.

instance sitting, as it were, in the place of the revising barrister, it is not justified in exercising precisely the same power?

It may be confidently asked, whether there ever was an instance known in which an appellate jurisdiction did not possess the same facilities of examination as those exercised by the court below? It has already been resolved that the elector is subject to the same necessity of establishing his vote on the merits, as he was at the time of registration; it follows as an obvious consequence, that the means of establishing those merits by his own examination must remain the same also.

The Committee resolved, that as the 52d section of the act allowed an oath to be administered to the claimant by the barrister, the claimant might now be called and examined. Due occupation, value, residence, and exemption from house tax, were then proved: the rate books showed a rating for a "house and garden;" upon which it was objected that there could be no identity, as the voter had only a house; but the objection was overruled: payment of rates was also proved.

The Committee resolved, that the name of Joseph Humby was improperly omitted by the revising barrister, and that his name be added to the poll in favour of the petitioner and Mr. Brodie.*

Isaac Young's case. A claimant cannot be examined in support of his vote, as to facts which occurred subsequent to the registration before the barrister.

In the case of Isaac Young, a question was raised as to the proof of the tender at the poll. The entry proof having been deemed duly made, it was proposed to call the voter to establish the fact of tender; but the Committee decided that the examination of the voter at all, before them, in support of his franchise, being only upon the principle of allowing him to state now all that he could have stated before the barrister, it necessarily followed that the tender not having been at that time made, he could not now be permitted to give evidence on that

* An objection was taken to this decision by Mr. Slade, on the ground that no tender had been proved; it being contended that the entry on the poll book was incorrect and insufficient: the objection, however, was overruled by the Committee.

point. In this case, likewise, the Committee not being satisfied with the voter's own proof of the payment of rates, obliged the petitioner's counsel to call the overseer to corroborate him.

James Johnson's case. A notice of claim containing no local description of the "house" constituting the qualification, and with nothing to connect it with the place of abode, held to be sufficient.

In James Johnson's case, the notice of claim differed from those produced in the former cases, inasmuch as the qualification was stated to be "a house," not "a dwelling house;" which latter denomination had been much relied on as contributing to make the preceding notices "of the like effect," according to the words of the act. The Committee, nevertheless, held the notice to be sufficient.

Case of the sitting member.

The petitioner being now at the head of the poll, and an adjournment having been granted to the following day, the counsel for the sitting member then opened the case of Thomas Moody.

4th May. Thomas Moody's case. Where the returning officer has decided that the third question was not satisfactorily answered at the poll, the Committee will review, and on proof of the merits of the case, reverse his decision.

Mr. *Slade* stated that this person had been unobjected to, and had been duly registered; but that at the election he had been called on to answer the questions, and take the oaths prescribed by the Reform Act. Upon the third question prescribed by the 58th section being put to him, namely, "Have you the same qualification for which your name was originally inserted in the list of voters?" after hesitating for a time, he replied, "I should say, yes;" and then turning to his solicitor, who was present in his character of town clerk, he added, "What say you, Mr. Hodding?" The solicitor made no reply; and the mayor, having before declared the answer to be equivocal, rejected the vote, and would not again put the question.

Ludlow, Serjt. here objected that the judgment of the returning officer was final upon the question whether a satisfactory answer had been given by the voter, and that the Committee, sitting only as a court of appeal from the decisions of the revising barrister, would feel themselves precluded from entertaining this question.

The Committee overruled the objection; after which Mr. Hodding was called to prove the facts as stated above. It appeared, also, that in the course of the election some

irregularity and hesitation having taken place at the mayor's booth, in the method of giving the answers, the mayor had by his, the town clerk's advice, publicly declared, in the presence of the agents on both sides, that he should expect a direct answer, yea or nay, to the several questions in all cases; and that the mayor, upon rejecting Moody's vote, added, "I have said before that I will have no equivocations." The facts, with respect to Moody's qualification, were also stated by Mr. Hodding to be these. The voter had been carrying on, for some years, the business of a nurseryman in partnership with a Mr. Geary; and the house and ground which constituted the qualification, were part of the joint property. A dissolution, however, of that partnership having been resolved on, an ejectment had been brought against Moody, but those proceedings were put a stop to by an injunction; and a receiver of the outstanding debts, and a manager of the business, had been appointed by the Court of Chancery. It appeared, further, that the manager had been put in possession of the premises in question on the 4th of September last, although neither he nor the receiver resided there; but, on the contrary, Mr. Moody continued to live in the house, and still kept the key.

Mr. *Harrison*, for the sitting member, contended that the answer was quite sufficient to satisfy the provisions of the act. In point of fact, the man had a perfectly good qualification; all that had occurred respecting it, had taken place previous to the time of registration; no objection was then taken, and the voter remained possessed of the very same qualification at the time of polling. The appointment of the receiver did not destroy it, and the manager put in, in consequence of the quarrel between the two partners, had only charge of the garden, shrubs, and stock. The house was still in Mr. Moody's occupation. The circumstances were such as possibly to raise some slight doubt in a conscientious man, who was ignorant of the legal effect of the proceedings that had taken place, and that gave rise to the reference to the

solicitor; but it is submitted, that that appeal, being merely ex abundanti cautelâ, cannot invalidate the answer.

Ludlow, Serjt. for the petitioner.—The question is whether, under the very equivocal circumstances connected with this case, and considering the hesitation of the voter at the poll, the mayor was not fully justified in holding the answer given to be unsatisfactory. The words of the 58th section are, "By reason of its appearing to the returning officer, upon putting such question, that the voter has not the same qualification for which his name was originally inserted in the register;" and it is submitted, that in the present instance it did not necessarily appear to the returning officer that the voter had such qualification. It is obvious that a disqualification may very frequently occur between the time of registration and the time of polling; for this, therefore, a remedy is given in this very third question. It is true, that regard being had to men of delicate and scrupulous consciences, the legislature did not think fit to exact an oath also upon this as upon the two first questions; but that is, if possible, a still more cogent reason why the answer should be at once plain and direct.

The evidence of Mr. Hodding shows that Moody had at that time a doubt as to his competence to answer the question in the affirmative, acting, as he then was, under the authorized agent of the Court of Chancery: he hesitated, and conscientiously; he looked to his solicitor for assistance; but that gentleman, although he had himself given a plumper for Mr. Wyndham, did not venture to express any opinion. The mayor had before given notice that every one must answer unhesitatingly; he saw here the hesitation of both parties, and acted justly in doing as he did. This is a very important question; the returning officer must be protected; he is bound not to enter any name idly on the poll, and is liable to be punished if he does so; and surely no one can be so good a judge of the circumstances of the case as the person who, being appointed to take the poll, has a full opportunity of

observing the symptoms of equivocation or confidence shown by the voter at the time. The Committee is bound to believe that officer acted conscientiously, nor is it reasonable to impute improper motives to him in his absence; the real question is, whether it did bonâ fide appear to the mayor that this man had not the same qualification: unless the sitting member can satisfy the Committee that the conduct and answer of the voter was such as to make it the imperative duty of the mayor to say that he had the same qualification, his case cannot be made out. It has been urged that the mayor did not repeat the question; but he was not bound so to do: and to the question, as it was put, it is clear that in point of fact no direct answer was ever given at all; it amounts only to this:—"I should say, yes, what say you, Mr. Hodding?"

The Committee resolved that Thomas Moody ought to have been allowed to poll at the last election for New Sarum, and that his name should be added to the poll in favour of the sitting member.

Joseph Burfoot's case. Where a discussion has taken place upon a claim to vote before the revising barrister, a ground of objection not then raised cannot be subsequently entertained before the Committee.

The counsel for the sitting member now claimed to strike off from the poll the name of Joseph Burfoot. This voter had occupied two houses in succession; he had been placed on the overseers' original list as the occupier of a house in Church Street, and then subsequently sent in a claim to be registered for a house in Fisherton Street; an objection had been taken to his vote before the barrister, but it had been finally retained. The overseers were called to prove the non-payment of some portion of the rates, but in the progress of this inquiry the Committee suggested that it should first be shown what was the nature of the objection raised before the barrister.

Mr. *Austin*, upon this, submitted that in the Ripon case,* the Committee had held, that when it had been proved that a discussion had once been raised before the

* See Ripon case, *ante*, p. 291.

barrister upon the merits, they would entertain any question upon the whole vote. Upon this principle, therefore, it would be totally immaterial to show what was the exact point raised before the barrister.

The Committee persisting in their resolution,* the overseer was called to prove that questions concerning rating were put to him upon this vote before the revising barrister.

Mr. Serjeant *Ludlow* objected, that the Committee having decided that they must be put in possession of the point upon which the revising barrister had adjudicated, better evidence than this ought to be given of that decision, and the grounds of that decision.

A communication made by a revising barrister to his colleague, as to a case upon which he required his advice, is not admissible as evidence to prove the point and the grounds on which the vote was decided.

Mr. *Austin* then proposed to call Mr. Elliott, to prove that his colleague, Mr. Oxnam, in whose court this vote had been discussed, had communicated to him that this case had turned upon a question of rating, and that after consultation they had come to an agreement on the decision which should be given.

Mr. Serjt. *Ludlow* objected, that this evidence, amounting to no more than what was told Mr. Elliot by Mr. Oxnam, was mere hearsay only, and could not be received.

Mr. *Austin* contended, that the objection raised was without foundation. The principle upon which hearsay evidence was always excluded, was, that it was of a doubtful and unauthentic character. But here the evidence tendered was the declaration of the revising barrister himself, than which there could be no better authority. This evidence was much stronger than proof of any thing which passed before the barrister in full court, because here there would be not only the decision itself, but also the grounds of that decision. The testimony of agents and others

* This having been a case of claim, the revising barrister was bound, by the 49th section of the Reform Act, to require that the vote should be established before him to his satisfaction, and as he must, in the absence of any proof to the contrary, be taken to have done his duty, it must be consequently presumed that every point as to the qualification had been gone into before the barrister.

present at the discussion must be liable to be coloured, according to the interests and feelings of the several parties; no testimony could be so satisfactory as that of the barrister himself, before whom the point was raised; but as it was not open to the Committee to call him, the next best evidence must necessarily be that of the colleague, to whom an official communication had been made upon the subject at the time, and who, by having been thus consulted upon that occasion, had in point of fact become himself a party to that judgment.

The Committee resolved, "that before the counsel for the sitting member proceed to give evidence of circumstances to affect this vote, they must show on what grounds the barrister decided, and the Committee was of opinion that primary evidence should be produced."

Mr. *Austin* then applied to have the further consideration of this point deferred, and cited Westropp's case before the Bedford committee, where under certain circumstances a case, although already entered upon, was postponed;* the Committee, however, refused the application, and decided that the vote of Joseph Burfoot do stand upon the poll.

John Brown's case. Grounds upon which a Committee will presume an occupancy.

In the case of John Brown, the voter had been registered, and was now objected to by the sitting member; the question raised was, whether the voter was or was not the occupying tenant.

Mr. Elliott having proved that this case was decided by him upon the merits, evidence was now given to the following effect:—It appeared that the voter had married some few years since the daughter of one Sarah Larkham, who at that time had taken certain premises called the Black Horse Tap, but who was then living, and had continued to live, till within the last twelve months, in service, as chamber-maid, at the Black Horse

* See ante, p. 97. It was suggested by a member of the Committee, that the present case, Burfoot's, was one of objection, which was an additional ground for not granting an adjournment, as it was more especially incumbent on the objector in all instances to be fully prepared.

Inn. Her daughter and son-in-law, however, went to live at the tap, and Brown's name was placed over the door. The landlord of the premises, Mr. Payne, a maltster, had been in the habit of supplying the house with malt, and now produced, without Mrs. Larkham's authority, a pass book, in which there were different entries made of payments of rent, and which contained also his bills for malt; for the malt he had been paid sometimes by her and sometimes by her son-in-law; the rent he had also received frequently from Brown. An excise license for the tap was also put in, granted to Mrs. Larkham, and dated October, 1832, in consequence of which licensing it further appeared, that her name had been added to that of Brown, already over the door. After quitting service at the Black Horse, she had gone to live with her son and daughter at the tap, but Brown continued in constant attendance on the customers, and received the money, except for a short interval, during which he acted occasionally as marker at a billiard table, in an adjoining house. The spirits sold at the tap were brought from Mr. Rogers, landlord of the Black Horse, according to a contract made with Mrs. Larkham, when she was there in service. Mr. Wyndham's agents frequented that house, and Mr. Rogers and Mr. Payne both voted for Mr. Wyndham.

Mr. *Austin*, for the sitting member.—This is a question of occupation, and upon the facts proved it is submitted, that Mrs. Larkham, and not Brown, was the occupying tenant of the premises in question. The house was taken by her, the license was granted to her, and the Licensing Acts* expressly provide that the license must be granted to the occupier; the malt which was necessary for carrying on the business appears to have been provided by her also; and in addition to that the rent likewise was paid by her, or in her behalf. This is the evidence given in support of her tenancy. What then are the facts on the other side? The very occupation of Brown, as marker at a billiard table at another house, in

* 35 Geo. 3, c. 113, s. 7; 48 Geo. 3, c. 143, s. 7.

itself would be supposition that he was at that time carrying on business as the landlord of the Black Horse inn, and unless a stronger case could have been made out as to the house than was even established, the presumption of tenancy is clearly in favour of Mrs. Larkham.

Conclusion.—In this case it must be taken, that Brown was duly rated for the premises, that he had paid those rates, and that the assessment rates, if any, were paid thereon. The name of these parties were made the ground of objection at the registration. The barrister then decided that he was the occupier, and the question now is whether or not that decision was wrong. Now the remaining rated is of itself strong presumptive proof of occupancy,* since if the rate be not appealed against, there is fair reason to infer that the party who has so neglected the remedy must be liable: but in addition to that, here we have the name of John Brown originally on the door, at a time too when Sarah Larkham was living and sleeping as a chamber-maid at the Black Horse: no name is added to that until the license is granted to the mother-in-law, and the date of the first license is October, 1832. Now before that month it was quite obvious that the next election would be contested, and when that is taken in connection with the fact that both Mr. Rogers and Mr. Payne were in the interest of the sitting member, it is clear that this course was adopted *for* the express purpose of endeavouring to deprive Brown *of* his vote. The presumption then being obviously in *favour of* the voter, since his name appears both on the *register* and the poll, is there any thing from which it can *be* reasonably inferred that he was not the occupier, or at any rate a joint occupier with his mother-in-law? If *not*, his vote must stand good.

The Committee decided that the vote of John Brown was a good vote.

Noah Beale's case. Proof of payment of rates.

In the case of Noah Beale, a question arose respecting the payment of rates. It was alleged and sworn to by a former overseer, that certain prior rates due from the

* Milborne Port case, 1 Doug. 129.

voter, in respect of the premises for which he claimed, had not been received; in opposition to this, evidence was given by another overseer that all the subsequent rates had been paid up, and the voter himself having been called, and having sworn that he had paid all rates due from him, the Committee held the vote to be good.

William Morris's case.

A voter rejected at the poll, on the ground of a variance between his Christian name and that entered on the register, held to be a good vote on proof of identity.

William Morris had been registered as John Morris, and had subsequently tendered his vote at the poll as John Morris, but was rejected by the returning officer as not being the same person whose name appeared in the register.

It was now contended that evidence of identity having been given, the voter's name should be entered on the poll. This was resisted on the other side, upon the ground that, in the case of a misnomer like this, the act had provided a suitable remedy by empowering the revising barrister, on application, to alter a wrong Christian name, and that the voter having neglected to avail himself of that advantage, had now no right to call in question the entry on the register; it was, in point of fact, conclusive evidence that the person registered was not Wm. Morris.

The Committee decided that the vote should be added to the poll of the sitting member.

The case of James Turner was similar, and the Committee decided in a similar manner, in favour of the petitioner.

John Percy's case.

Parol evidence admitted to prove a tender not entered on the poll book.

The case of John Percy turned upon due proof of tender. There was an entry on the register of a voter by the name of "Benjamin Pearcy," and a witness was now called to prove that a person tendered his vote at the poll by the name of John Percy.

Ludlow, Serjeant, objected to this evidence, submitting that the only legitimate mode of proving a tender was by the production of the poll-book; that document was in the nature of a record, and the authority of a record could not be impugned: it was a well-established maxim, that *quod patet per recordum* cannot be falsified, and no court would take cognizance, aliunde, of a fact which might have been, and ought to have been stated in the record, and is not.

Mr. *Harrison*, for the sitting member, contended that the poll, in this instance, could not be treated as a record, since nothing could have been more irregular than the manner in which the tenders were entered,—a fact which the evidence of the mayor had established. Again, suppose that a returning officer should refuse to enter a tender, could it be said that there was no remedy against such an act of injustice, and that the tender might not be proved aliunde? If that then were so, where is the great difference between such negligence as has taken place in this instance, and a wilful omission? Here there is no doubt about the validity of the qualification, for the voter has been duly registered; nothing, therefore, is wanting to give validity to his vote but proof of the tender, and that proof it is now proposed to give. In the Southwark case,* the check clerk was called to prove that the poll clerk had not done his duty, and this case must be decided on a similar principle.

The Committee decided that the evidence should be admitted.

The witness then stated, that he had just before seen at the door of the committee-room the individual who declared himself to be the person entered in the register as Benjamin Pearcy; that he remembered the same person claiming to vote at the poll, and that he was rejected because he gave his name as John Percy, and that when the poll clerk had so rejected him he went into the mayor's booth. No evidence was given of what passed in the mayor's booth, but another witness stated that Percy, on first presenting himself at the poll, tendered his vote "for Wyndham a plumper," and that after a second question had been put he saw the check clerk enter his name.

A voter cannot be admitted to give evidence to prove his own tender.

Mr. *Harrison* then proposed to corroborate this evidence, by calling the voter himself, contending at the same time upon the authority of the Harwich case,† that

* 2 Peck. 155; note A, 167. As to the tender to the poll clerk, see also 25 Geo. 3, c. 84, s. 7.

† 1 Peck. 396.

there was enough already in proof to justify the Committee in presuming the tender.

Ludlow, Serjeant, objected that the evidence of the voter could not possibly be received on this point; this was a fact capable of proof aliunde, and this case differed widely from that in which the Committee had previously admitted the evidence of the voter;* there the Committee, sitting as it were in the place of the revising barrister, had allowed Humby to prove before them all that he could have been examined to at the registration; but the circumstances connected with this tender occurred long after the registration, the same principle, therefore, could by no means be acted on in the present instance.

The Committee decided that the evidence of John Percy be not received with respect to the tender of his own vote†, and that his name be not placed on the poll.

Henry Cooper's case.

Held, that a Member of Parliament is not bound to answer a question involving proof of his having paid his agent at the election, which agent had voted for him as well as for the petitioner.

Henry Cooper had polled for the petitioner, and for Mr. Brodie. This was a question of agency.

Mr. Brodie was now called, and stated that he had engaged Cooper as his agent at the election, and that he had unquestionably acted as such.

The next question was "did you pay him?"

Ludlow, Serjeant, objected to this question, that the witness ought not to be compelled to answer. It was here proposed to examine a Member of Parliament, touching the payment of a person who voted for him as well as for the petitioner; if, therefore, there were any thing illegal in his voting, the member who procured that voting must necessarily be inculpated by the transaction. Mr. Brodie, therefore, could not be called on to prove a case against himself. The preamble to the 7 & 8 Geo. 4, c. 37, which was the act relating to paid agents, expressly stated "that it was expedient to make further regulations for preventing corrupt practices at elections of members to serve in Parliament, and for diminishing the expense of such elections." Upon the acknowledged principle, therefore, "nemo tenetur prodere seipsum," Mr. Brodie

* See Humby's case, *ante*, p. 317.

† See the same point decided in Young's case, *ante*, p. 318.

could not be taken as to prove the participation in what he [illegible] corrupt practice.

Mr. [illegible], on the sitting member.—If any objection [illegible] to be taken, I submit that from Mr. Brodie himself, and from his own [illegible] of a party who are connected [illegible] by no means unanimous. But it is for him to say whether he chooses or not to criminate himself. For, in truth, no misdemeanour has been committed by Mr. Brodie; the principal object of the [illegible] Act, as stated in the preamble, was to diminish expense, and to prevent persons from voting who were supposed to be unduly influenced. But the extent of the penalty imposed—the party pays [illegible] vote, or, if he do so, his vote is void. Mr. Brodie, therefore, may safely answer the question.

The question was then repeated, and Mr. Brodie put it to the Committee whether he was bound to answer.

The Committee expressed an opinion that he was not, and he consequently declined, and withdrew.

Adjournment refused.

Mr. *Harrison* then applied for an adjournment, for the purpose of furnishing himself with further evidence on this case, stating, that he had been informed that Mr. *Brodie* had consented to be examined, and that, being perfectly satisfied himself that there was nothing criminal in retaining agents, he had felt satisfied that no objection could be taken to Mr. Brodie's proving the case.

The Committee refused an adjournment.

Mr. *Harrison*, on the part of the sitting member, then abandoned the seat.

The Committee then resolved, That Wadham Wyndham, Esq., was not duly elected.

That the petitioner was duly elected, and ought to have been returned.

That neither the petition, nor the opposition to it, were frivolous or vexatious.

The Committee also informed the House that they had altered the poll taken at the said election, by adding to it the names of James Smith and others, (eight in all,) as having had a right to vote at such election.

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CASE XVI.

BOROUGH OF MONTGOMERY.

The Committee was chosen on Wednesday, March 20th, and consisted of the following members.

Sir Richard Godin Simeon, Bart. (Chairman,) *Isle of Wight.*

Lord Henniker, *Suffolk, East.*
Fergus O'Connor, Esq. *Cork County.*
Patrick Lalor, Esq. *Queen's County.*
Sir Francis Blake, Bart. *Berwick.*
Richard Sullivan, Esq. *Kilkenny City.*
Maurice O'Connell, Esq. *Tralee.*
William F. Finn, Esq. *Kilkenny County.*
Charles Smith Forster, Esq. *Walsall.*
Hon. Charles Fleming, *Stirling County.*
Garrett Standish Barry, Esq. *Cork County.*

Petitioners—Electors.

Sitting Member petitioned against—David Pugh, Esq.

Counsel for the Petitioners—Mr. Serjt. Merewether and Mr. Serjt. Heath.

Agents—Messrs. Sherwood and Thorp, and Messrs. Sweet and Carr.

Counsel for the Sitting Member—Mr. Harrison, Mr. Follett, and Mr. Bullock.

Agent—Mr. Hooper.

THE Petition in this case was entitled "The Petition of Edward Jones, of the Rock Cottage, in the parish of Llanllwchaiarn, in the county of Montgomery, Gentleman, and Thomas Owen, of Vaynor, in the parish of Newtown, in the same county, Farmer, both respectively electors, and claiming to have a right to vote in the election of a member for the borough of Montgomery."

Preliminary objection: that the petitioners had omitted to describe themselves, in their petition, as persons having a right to vote at the election to which the petition related, and that the enquiry prayed could not, consequently, be proceeded with.

Mr. *Follett*, for the sitting member, upon this took a preliminary objection.—This description of the petitioners is inadequate, and does not satisfy the provision of the statute; the petition consequently cannot be gone into. By the 9 Geo. 4, c. 22, s. 4, it is enacted, "that no election petition shall be proceeded upon, unless the same, at the time it is presented to the House, shall be subscribed by some person or persons claiming therein to have had a right to vote at the election to which the same shall relate, or to have had a right to be returned as duly elected thereat, or alleging himself or themselves to have been a candidate or candidates at such election, or claiming therein to have had a right to vote at the election of any delegate or commissioner for choosing a burgess for any district of burghs in that part of Great Britain called Scotland, to which the same shall relate." Now, in the present case, the petitioners do not state that they had a right to vote at the election to which their petition relates, but they describe themselves simply as electors and persons claiming to have a right to vote in the election of members for the borough of Montgomery: that they may have been so at the time when the petition was framed may be perfectly true, but it by no means follows that they were so at the period when the election itself took place. The Committee therefore has no power to go into the case; the words of the act, as applicable to the character in which these parties appear, are imperative,—"no petition shall be proceeded on unless the same, at the time it is presented to the House, be subscribed by some person claiming therein to have had a right to vote at the election to which the same shall relate;" and here no such allegation of claim occurs. The point is not new, for a similar objection was more than once taken under the 28 Geo. 3, c. 52. Election petitions were regulated by that statute up to the passing of the 9 Geo. 4, c. 22, and as in all matters relating to English election petitions, there is no essential difference between those two acts, the cases decided upon the former

may still be cited as an authority. The first that occurs is the *Carmarthenshire case*,* and there the petitioner was described only as "a freeholder of the county of Carmarthen." The next is the *Boston case*,† where the petition professed to be the petition of "certain persons having a right to vote at the election of burgesses to serve in Parliament for the borough of Boston;" and in both instances the objection of insufficient description was taken. But it will be contended that in both instances counsel were directed to proceed with the case; that however is less material to the present question, since it would appear that those decisions were arrived at upon another ground, namely, upon the mistaken supposition that the Committee had no power to interfere on the preliminary point; the House, it was argued, the petition having been once received and referred to a Committee upon the merits, having by those very measures in point of fact virtually decided that it should be proceeded upon. The error which had been thus committed was more fully exposed by a debate and division in the House of Commons, on the 2d of February, 1804. A petition had been presented against the return of Sir Francis Burdett, by certain persons who were therein described only as "freeholders of the county of Middlesex," and a motion was consequently made by Mr. Fox, that the order for taking into consideration that petition should, for want of an adequate description, be discharged. After a debate of some length, the motion was negatived by a considerable majority; it was negatived however on this ground—not because the description appeared to be sufficient to satisfy the statute, but because, as was contended by Mr. Perceval, then attorney-general, the objection was deemed to be one which should be taken before a committee, according to the true intent and spirit of the Grenville Act, which removed all such matters from the immediate cognizance of the House. In principle, therefore, the two first cases are overruled

* 1 Peck. 286. † Ibid. 434.

by the third: there had been a misapprehension* on the part of the committees as to the extent of their jurisdiction, and the real state of the law was recognized and vindicated in the subsequent vote in the *Middlesex case*, by which the House declared itself incapable of entertaining the question; but the validity of the objection, upon the ground of misdescription, still remains untouched. If this need confirmation, it may be found in the position advanced by Mr. Rogers, who observes† on the 28 Geo. 3, c. 52, that the effect of that statute is, that no petition, unless signed by persons claiming to have had a right to vote at the election referred to, "should be proceeded upon in the manner prescribed in the said above-recited acts," which are the 10 Geo. 3, c. 16; 11 Geo. 3, c. 42; 14 Geo. 3, c. 38, and 25 Geo. 3, c. 84; and the manner of proceeding so prescribed is that in which a committee should proceed upon a petition, without any reference to any measures to be taken before the House itself. Again, "a select committee," he observes, "is the legitimate tribunal before which objections, both to the form and substance of a petition, ought to be taken, and any attempt to restore the old practice of discussing the controverted elections and returns in the House of Commons, is an infringement of the Grenville Act, and a violation of the present constitution of Parliament;" and further, "the words of the act are so plain, that it is difficult to account for a committee having overruled the objection when taken before them." Nothing indeed could be more dangerous in practice than for committees to depart from the plain, obvious and intelligible words of an act of parliament, and no precedents, however strong, could safely be deemed to justify such a course; but should the doubtful precedents of the Carmarthenshire and Boston Committees continue to be still insisted on, the very much more recent decision in the *Nottingham case*,‡ where

* See 1 Peck. 299.

† Rogers on Committees, pp. 21, 22.

‡ Corb. & Dan. 197.

the Committee asserted and acted upon their jurisdiction, will considerably outweigh such authorities. There the description, not materially differing from that in the present case, ran thus, "The Petition of Richard Reckless, of Cheapside, in the city of London, hosier, and James Edenborough, of Fore Street, in the said city of London, gentleman, who are electors and persons having a right to vote, and who did vote at the last election of members to serve for the said town and county in this present Parliament." To this an objection was taken, that the petitioners had not stated that they had any right to vote for the town of Nottingham at the last election. The objection was not taken until the fifth day of their sitting, yet that Committee determined that the petition was not conformable to the provisions of the 28 Geo. 3, c. 52, and that the petitioners should not be allowed to proceed. With such an authority before it, the present Committee, it is submitted, will not feel itself justified in abiding by previous decisions arrived at under misapprehension, but following the plain letter of the act, will determine that the petitioners are not entitled to proceed.

Mr. Serjeant *Merewether*, for the petitioners.—This is an objection purely technical, and as such should be discouraged; in point of fact, no one instance can be cited in which a similar objection has been allowed to prevail. In all the prior cases, the *Carmarthenshire*, the *Boston*, and the *Middlesex*, the petitioners had alike omitted to describe themselves as claiming to have had a right to vote at the election to which their petitions related; and that is the very omission which it is contended must prove fatal here; yet in each of those cases the same objection was taken, and in each it was similarly overruled, not only twice by Committees, but also by the House itself, though the motion was earnestly pressed by Mr. Fox. But it is said that the latter decision especially proceeded on different grounds, yet as both points were raised during the debate, it may well be presumed that the mere technicality of the objection contributed as much to the

result as the supposed want of jurisdiction, since the passing of the Grenville Act. Nay, the presumption in favour of the first supposition is stronger still: in the course of the discussion, numerous precedents were cited to show the general practice of Parliament: in all these the petitioners described themselves as "freeholders, electors, legal electors, freemen," and by other denominations, but in all referring not to the time of the election, but to the time of the complaint made:* add to this, the then recent decisions on the *Carmarthen* and *Boston* petitions, and the point on which the decision of the House turned can hardly remain doubtful. But in truth, moreover, the allegation of a want of jurisdiction would not have been founded on fact, since under the 28 Geo. 3, as under the 9 Geo. 4, the question whether a petition should be proceeded on, is a question for the House, and not for a committee, who are especially charged to go into and try the merits. Then as to the *Nottingham case:* undoubtedly at first it would seem in point, but on reference to the report, it will be seen that the objection really taken was this, namely, that the petition did not sufficiently appear to be that of the electors of the town of Nottingham: the petitioners were described as having a right to vote for the *said* town and county, but there was nothing to which the word *said* could refer but the "city of London," in which the petitioners were stated to be residing, and there was not even a marginal reference to the town and county of Nottingham. Assuming then, for the sake of argument, that that Committee was right in determining to stop the proceedings and

* Stirling, 46 Journ. 15; Orkney and Zetland, ib. 42; Radnorshire, ib. 59. See these cases collected in 1 Peck. 293, Mr. Addington's speech. There are not wanting, however, numerous other cases, where the petitions follow more precisely the words of the statute. See Taunton case, 1790, 46 Journ. 16. "Electors of the said borough at the last election," Dorchester, ib. 27; Okehampton, ib. 43; Downton, ib. 59; Fowey, ib. 61; "being persons who had a right to vote at the last election;" Flintshire, 1796, 52 Journ. 150; and in the Carrickfergus case, Minutes, 1831, the description "undersigned freemen," was deemed insufficient.

in declining to go into the merits, still the question raised there was not the same as that which is to be decided here.

Thus much for the law as it stood before the passing of the 9 Geo. 4, c. 22; next then, is the objection at all strengthened by any thing contained in this act? On the contrary, the 40th section declares, "that every such select committee shall try the merits of the return or election, or both, and shall determine by a majority of voices, whether the petitioners, or the sitting members, or either of them, be duly returned or elected, or whether the election be void, or whether a new writ ought to issue; and shall also, at the time they inform the House of their final determination, report to the House whether such petition or the opposition to it, did or did not appear to them to be frivolous or vexatious, and whether, in case of no opposition to the petition, the election or return, or alleged omission of the return, did or did not appear to them to be vexatious and corrupt." The substantial merits, therefore, are here referred to the Committee, and to decide on them is their peculiar office: the preliminary question, as to whether the petition shall or shall not be proceeded upon, is never mentioned as being one for their consideration; it is, in point of fact, a question for the House, and a question moreover, which, by the very fact of referring the merits to the Committee, may be considered as already decided. The reasoning of Mr. Rogers does not apply to the present statute, since the words which he quotes from the 28 Geo. 3, "No such petition shall be proceeded upon in the manner prescribed in the said above-recited acts," are materially varied in 9 Geo. 4, c. 22; the words in the latter statute being merely, "shall not be proceeded upon." The proper time, therefore, for objecting to a petition in matter of form, is before it has been proceeded upon by the appointment of a day for taking it into consideration,—by the taking of the recognizances, by the mutual interchange of the lists of voters, by the

ballot, by the striking of the Committee, and, lastly, by the assembling and swearing that Committee to try the merits.

But granting once again that the Committee have jurisdiction to take cognizance of such matters, the inaccuracy, if objected to, amounts at the utmost to the merest verbal omission. It has been argued indeed, that the petitioners might well be persons entitled to vote at the date of the petition, but who, nevertheless, might have enjoyed no such right at the time of the election to which that petition refers; but the process of registration, provided by the Reform Act, renders, in this instance, such an hypothesis untenable. No one can have a right to vote who is not registered, and, as there has been no registration between the election and the time of presenting this petition, it follows, that those who are truly alleged to have had a right to vote at the date of the petition, must also have been in the enjoyment of that right at the antecedent election. The allegation, therefore, in the petition is substantially sufficient, and this alone seems conclusive on the question.

Mr. Follett in reply:—The express words of the 9 Geo. 4, c. 22, are, that "no petition shall be proceeded on unless it be subscribed by some persons claiming or alleging as therein mentioned:" now this petition is not so signed. Will then the Committee proceed upon it in direct contravention of the act of parliament? There are several additional cases, in which the power of committees to decide upon objections of this character is clearly recognized. The *Taunton case*,* the *Penryn case*,† the *Sandwich case*,‡ all unquestionably establish that point: the *Hertfordshire case*§ went so far as to decide, that petitioners who had themselves voted for the sitting member, they being at the time cognizant of the acts of treating and bribery with which the petition charged him, should, on that very

* Minutes, Feb. 1831.
† Minutes, Feb. 1827.
‡ Minutes, May, 1808.
§ 1 Peck. 210.

ground, be disqualified from proceeding. Then, as to the Reform Act, it makes no substantial difference in the case as to the description of the petitioners. The register is by no means a conclusive test: it may even happen that a party whose name has been omitted from it by the decision of the revising barrister, may, nevertheless, be entitled to vote—and, further, he would, in all probability, become by necessity a petitioner for the express purpose of establishing his vote tendered at the election.

The Committee decided that the petitioners should proceed. The objection overruled: the petitioners directed to proceed.

The petition was then read.—It stated, that at the last election for the borough of Montgomery, Colonel Edwards, and David Pugh, Esq., were candidates; that a poll was demanded at the said election, and that the same was granted and proceeded upon. It then alleged, amongst other charges, that Mr. Pugh, by himself and agents, and other persons on his behalf, acted, aided, and assisted in carrying off and detaining, and keeping from voting many voters who had promised to vote for Colonel Edwards, and who intended to and would have voted for him if not so prevented; that the agents employed by Mr. Pugh were guilty, not only of threats and acts of intimidation, but of acts of force and violence, towards the agents and friends of Colonel Edwards; that the lord lieutenants of the counties of Montgomery and Salop, one being a peer of the realm, and other persons, by themselves, their agents, and servants, unconstitutionally interfered in the said election, and aided and assisted Mr. Pugh, at and before and during the said election, in influencing the voters and electors of the said borough to vote for him, Mr. Pugh, and against Colonel Edwards; and that some of the voters, who intended to vote for Colonel Edwards, were taken to the seats or residences of the said lord lieutenants respectively, and there kept and detained, and entertained with meat and drink, with a view to prevent their voting for Colonel Edwards, and to induce and

Statement set forth in the petition.

prevail upon them to vote for Mr. Pugh; that Mr. Pugh, by himself or agents, and others on his behalf, also fraudulently carried away one of the voters, who had promised to vote for Colonel Edwards, and took him to the house of him, Mr. Pugh, where he was kept and detained; and that, for the purpose of concealing the real object and view in taking away such voter, Mr. Pugh or his agents falsely represented, that his life was in danger in case he remained at his own home; and that during the election it was discovered that the said voter was concealed at the house of Mr. Pugh, and that an express was sent for the said voter, who was nevertheless kept out of the way until after the election was past. That Mr. Pugh received and entertained at his own residence many of the voters, in order to induce them to vote for him, or to prevent their voting against him and for Colonel Edwards; and that the said voters and other voters ate and drank there, and at other places, at Mr. Pugh's expense, after the teste of the writ for the said election. It contained also other specific charges of treating and bribery, and concluded by a prayer, that the election might be deemed null and void.

The poll-book having been put in and duly authenticated, it appeared that the numbers, at the final close of the election, were, for Mr. Pugh 335, for Colonel Edwards 321.

Evidence was then gone into at length in support of the foregoing allegations, and some instances of alleged intimidation were established. Upon the charge of carrying off and detaining Colonel Edwards's voters, it was proved, amongst other things, that a person living at Llanindloes, one of the contributory boroughs to Montgomery, had at first promised his vote to Colonel Edwards; that he had been afterwards induced, by an agent of Mr. Pugh's, to come to Montgomery a few days before the election; that he remained there at an inn taken for Mr. Pugh's friends for four-and-twenty hours; that he was afterwards conveyed in a chaise

to the seat of the lord lieutenant of the county, where he remained two days more, after which he was sent in some other vehicle across to Shrewsbury. Once arrived there, he resumed his original intention, and, getting back in time, voted for Colonel Edwards. Open house was proved to have been kept for several days previous to the election, at the seats of the Earl of Powis and Lord Clive; to these places, many persons, who had promised their votes to Colonel Edwards, were proved to have been taken by agents for Mr. Pugh, and to have been ultimately brought up and to have voted in his interest. Another individual, who had promised his vote to Colonel Edwards, Mr. Pugh himself, on the hustings, admitted had been entertained, and was left at his house early on that morning; messengers were immediately despatched with a letter from Mr. Pugh to bring him to Newtown, one of the contributory boroughs, but after much misdirection and delay on the part of Mr. Pugh's friends, they were informed on arriving that the man had been sometime gone, though, in point of fact, he never appeared at the poll at all during the election. The treating also after the teste of the writ, as well at public houses as at Mr. Pugh's own seat, was fully proved, and the payment of the bills at the former brought home to that gentleman's accredited and authorized agents. The bribery was alleged to have been conducted through his butler, and, upon one occasion, more ingeniously by marking the sum to be given as a consideration on the glove of a lady strongly devoted to his interest.

Merewether and *Heath*, Serjts., for the petitioners, on these facts contended, that the allegations in the petition were fully proved; and citing the *Southwark case*,* and *Felton* v. *Easthope*,† and more especially the *Middlesex case*,‡ as to the agency and treating, submitted that the election must be declared void.

Mr. *Harrison*, for the sitting member, argued, that nothing short of such irregularities as essentially affected

* Clifford, p. 3. † Rogers on Elections. ‡ 2 Peck. 31.

and decided the election, could be deemed sufficient to avoid the return, and cited the *Coventry case** in support of that proposition. There, much intimidation prevailed in the cases of individuals, and considerable rioting even took place; yet, as the number of votes remaining unpolled was so considerable as to show that the issue could not have been materially affected by the individual instances mentioned, the return was held to be good. Upon the charge of treating, he cited *Hughes* v. *Marshall*,† and the *Chester case*,‡ and relied much upon want of proof of sufficient authority to the agents.

The Committee determined, that David Pugh, Esq. was not duly elected; that the election was void; and, that neither the petition nor the opposition to it was frivolous or vexatious.

* Minutes, March, 1827. † 5 Crom. & Jer. 118.
‡ Corb. & Dan. 68.

CASE XVII.

BOROUGH OF MONTGOMERY.

SECOND COMMITTEE.

The Committee was chosen on Wednesday, May 22, and consisted of the following members.

Sir Thomas Edward Winnington, Bart. (Chairman) *Bewdley.*

The Hon. Sidney Herbert. *Wilts, South.*	John B. K. O'Neil, Esq. *Antrim County.*
Thomas Hudson, Esq. *Evesham.*	Hon. Frederick G. Howard. *Morpeth.*
Lord Arthur Chichester. *Belfast.*	The Earl of Lincoln. *Nottinghamshire, South.*
William N. Macnamara, Esq. *Clare County.*	Robert N. Biddulph, Esq. *Denbighshire.*
Lord James Fitzroy. *Thetford.*	James Emerson Tennant, Esq. *Belfast.*

Petitioners—Electors.

Sitting Member petitioned against—Colonel Edwards.

Counsel for the Petitioners—Mr. Harrison and Mr. Corbett.

Agents—

Counsel for the Sitting Member—Mr. Serj. Merewether and Mr. Serj. Heath.

Agents—Messrs. Sweet and Carr.

Petition.

THE petition stated that at the last election for the borough of Montgomery, in April, 1833, subsequent to the general election in 1832, and consequent on the decision of the former Committee in the case of Mr. Pugh, the candidates were Colonel Edwards and Mr. Corbett, and that the petitioners claimed to have, and had a right to vote, and did vote at both elections: that at the general election Colonel Edwards and Mr. Pugh were candidates, and that Mr. Pugh had the majority; that the petition then presented against his return prayed

that his election might be declared void, but omitted to pray that the return might be amended by declaring Colonel Edwards duly elected; that a new writ consequently was issued, and that the numbers polled at the ensuing election, as declared by the returning officer, were for Colonel Edwards 331, for Mr. Corbett 321, whereupon Colonel Edwards was declared duly elected; that this majority nevertheless was colourable only, and had been obtained by certain corrupt and unconstitutional practices, therein more particularly set forth; and that had not the freedom of election been thus violated by Colonel Edwards, his friends, agents and persons employed in his behalf, as well at the election in December, 1832, as at the election in April, 1833, Mr. Corbett would have been elected and returned, and not Colonel Edwards. It then proceeded to charge bribery and treating on the part of Colonel Edwards, both at the first and at the subsequent election; and more specifically also alleged that Colonel Edwards, by himself, his agents, and friends, between the time of the teste and return to the writ for the first election, and during the sitting of Mr. Pugh, and subsequently to the decision of the Committee, and especially after the teste of the second writ, by bribery, treating and promises, and by various threats and corruptly representing that the promises made by him at the previous election would only be made good on the continuance of the support of the same parties at the second, procured, or endeavoured to procure, various persons having, or claiming to have, votes at such last-mentioned election, to vote thereat for him Colonel Edwards, and to forbear to vote for Mr. Corbett. It further charged that the register was incorrect, and in conclusion prayed that the election of Colonel Edwards might be pronounced null and void, and that Mr. Corbett might be declared duly elected.

Mr. *Harrison*, in opening the case for the petitioners, stated that it was one of rare occurrence, inasmuch as the treating, the subject of complaint in this petition, had taken place in the election preceding that at which the

present return was made. At the first election for Montgomery, which took place on the 12th of December, 1832, Colonel Edwards was the unsuccessful candidate; at the second election, however, which followed in April, 1833, in consequence of the decision of a Committee of the House that Mr. Pugh's return was null and void, Colonel Edwards became the sitting member; and the present petition, setting forth that he had been guilty of bribery and treating after the teste of the first writ, 3d of December, 1832, proceeds to claim a scrutiny, and alleges that the majority, after deducting the votes thus disqualified, is in point of fact in favour of the Colonel's opponent, Mr. Corbett.

Counsel not allowed to open acts of treating at the prior void election, as part of the case against the same candidate at the second election.

Mr. Serjt. *Merewether*, for the sitting member, here objected to Mr. *Harrison's* proceeding to state the grounds on which it was proposed on the present occasion to go into the bribery and treating which had taken place at the former election, contending that upon a petition against the return made in April, 1833, the Committee had no power to take cognizance of the acts of treating and bribery alleged to have taken place at the former election in December, 1832; and, that being so, that the counsel for the petitioners was precluded from adverting in his opening to any such topics.

Mr. *Harrison*, in answer to this objection, submitted that the objection was premature, that he was entitled to open the case at his own discretion, and that the proper period for raising the question as to the jurisdiction of the Committee would be upon the production of evidence to support the case so opened. There is a precedent precisely in point. In 1808 this very question arose in the case of *New Malton*.* There, at the first election, Lord Henley was returned, and was subsequently ousted upon the petition of Mr. Bryan Cooke, who had been the unsuccessful candidate. On the consequent issuing of the new writ, Mr. B. Cooke was himself returned, and then a petition was presented charging

* Minutes, May, 1808. See also the *Camelford case*, Corb. & Dan. 309; and the *Sosford case*, 3 Luders, 110.

that gentleman with bribery and treating at both those successive elections. The case was then opened without interruption, the poll next proved, and it was not until evidence was offered to show what took place at the first election that any objection was taken to the proceedings. The point was then argued by two counsel * on each side, as being one of great importance, and the Committee decided that the evidence should be admitted. The petition in the present case has been drawn precisely upon that model, and here, as there, we claim that the two elections should be considered as one transaction, and that we should be permitted to open the case accordingly.

Merewether, Serjt. in reply, insisted that a prejudice ought not to be unjustly raised by a statement of facts which the Committee would afterwards in all sound discretion hold themselves to be entirely precluded from going into, and claimed that the counsel for the petitioner should be confined in his address to the circumstances attendant on the second election.

The Committee resolved that Mr. *Harrison* be directed to confine himself in his opening exclusively to the proceedings of the election in April, 1833.

Mr. *Harrison* now submitted that no argument had been addressed to the Committee on the main question, as to their jurisdiction to take cognizance of the former election, and that great injustice would be done by coming thus prematurely to a decision which would affect that point. In order to prove the bribery imputed to Colonel Edwards at the second election, it would be necessary first to establish the agency of the parties who had acted in support of that candidate, and that could only be done by a reference to the transactions of the first election; and that as Colonel Edwards was not a party to the first petition, there was no opportunity of reviewing his conduct at that time.

The Committee having again intimated that the opening must be confined to the other parts of the case, the

* Mr. Serjeant Lens and Mr. Warren, Mr. Dallas and Mr. Wetherell.

counsel for the petitioners then proceeded to state the general law of bribery and treating, citing the 2 Geo. 2, c. 24; the resolutions of the House of Commons in 1700 and 1833; the 7 Will. 3, c. 4; the *Poole* and *St. Ives cases*,* the *Chester case*,† and *Felton* v. *Easthope;* in conclusion claiming for his client a general scrutiny, and the further privilege of raising upon the evidence the question as to his right to connect the proceedings of the two elections, in such a manner as to enable him to give proof of agency and bribery at both.

The production of poll-books by the returning officer, they having been out of his possession since the election, and in the hands of an inferior officer not appointed by him, is not sufficient proof of their authenticity.

Mr. Arthur David Jones, the bailiff and returning officer for the borough of Montgomery, was then called to prove the poll. The effect of his evidence was, that he had at the election, first received the poll books from the poll clerks, and having made out the return, delivered them into the custody of the town clerk, in whose possession they had remained until they were again delivered, a day or two since, into the hands of the returning officer, to be produced before the Committee. It appeared that Mr. Edye, the town clerk, was the deputy of the recorder, Sir Charles Jones, and appointed by that officer, and not by the bailiff, the recorder himself being appointed by the corporation. The town clerk's office was the usual depository of the corporation papers, and these were the same books which had been there deposited. On the hearing of the first Montgomery petition, the same returning officer had proved the poll, but no objection was then taken on the part of the sitting member.

Mr. Serjt. *Merewether*, now objected that this evidence was not sufficient proof of the authenticity of the poll. The poll is the only legitimate evidence of the election and return, and many instances have occurred in which committees have stopped the whole proceeding *in limine* for want of a satisfactory authentication of that instrument, and where the parties have, through their own negligence, been guilty of a default in that respect, any

* 2 Dougl. note, p. 400. † Corb. & Dan. 68.

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curred during the present session, the deputies of the returning officer had kept the books all night during the election, which is directly in contravention of the 68th section of the Reform Act, and yet the poll was there admitted, and that too, after time had been given to send for the town clerk, and after proof that the books when in his custody had been left about in a public office, and had been for a time out of his possession. There is no ground, therefore, for demanding the strictness of custody or of proof, which is now contended for. Here we have called the bailiff of the borough, who is the chief officer of the corporation, and who therefore might well have the keeping of the corporation documents; and the town clerk being their officer, may well, for this purpose, be considered his deputy. If this be not deemed sufficient, an application must be made to the Committee to give time to send for Mr. Edye; but upon the authority of the *Oxford case*, it cannot be necessary to produce him, since the town clerk, when brought up in that case, added nothing to the weight of evidence, and yet the poll was received. The Reform Act, moreover, is silent as to any custody but that of the returning officer, and here that officer has been called. All therefore has been done which can legally be required: if there be any question as to interlineations or alterations in the books, that may be raised when the scrutiny is gone into; at present the point is as to the general authenticity: to allow, therefore, a technical objection like this to interfere with putting in the poll at all would amount to a denial of justice, and on the very last petition the poll was proved in the same manner by this very person.

Mr. Serjt. *Merewether*, in reply:—On the last petition the objection was not taken, and for a very sufficient reason, as it was the interest of the then sitting member that Mr. Edye should not be examined, and it is obvious now that the same consideration made the petitioners, who in this case represent the same party, anxious not to produce him, but to call instead Mr. Jones, as a safe

witness. It has been contended that if this objection were to prevail, it would be necessary to call all the poll clerks, but it is not so, for when the books have once passed into the custody of the proper officer, no evidence is requisite to substantiate them but his. The *Limerick case* is precisely in point, for there the evidence being insufficient, the Committee refused to grant an adjournment: the Irish statutes which have been cited on the other side, do not at all apply to an English borough. Then as to the *Londonderry case*,* there the books had never been out of the possession of the returning officer since the election, and yet, in the absence of the affidavit required by the act,† it was held necessary that he should be called to prove them; and in the *Oxford*, also, the Committee expressly resolved that further evidence was essential to prove the authenticity of the poll books.

The Committee resolved that further evidence was necessary to prove the poll books.

An adjournment to give the petitioners time to send for the town-clerk to prove the poll, refused, it being admitted that he had not been summoned.

Upon this an application was made by Mr. *Harrison*, for time to send for Mr. Edye, it being admitted that he had not been summoned.

Mr. Serjt. *Merewether* objected, that the petitioners having been themselves guilty of a default, in not summoning the officer in whose custody they well knew the books to be, this was not a case for the indulgence sought for. The practice of Committees was not to give time where negligence could be proved against the party asking it. There could be no doubt, as well upon principle as from the very fact of the delivery of the books to the town clerk by the returning officer, that the former was the proper custos of those documents, and as the case stood at present, the whole period during which they remained in his hands was left uncovered, a difficulty which might have been at once obviated by producing

* *Ante*, p. 252.

† 1 Geo. 4, c. 11, s. 3, which requires an affidavit of verification from the returning officer. See *ante*, p. 252.

him as a witness. The general effect of all the cases on this subject is, that where the petitioner might have brought the proper witness and does not, there the Committee will not give time: in the present instance, there is every reason to suppose, that the petitioners had a specific object in keeping Mr. Edye out of the way; they are now, therefore, in the condition of a party who at a trial has omitted to bring up the proper witness, and they must take the consequence.

Mr. *Harrison* again pressed upon the Committee the course of practice which had prevailed in this respect of late years, and contended that the having omitted to summon this witness under such circumstances, could be by no means held to be such negligence as would justify the Committee in refusing the application. The returning officer being the bailiff, and therefore the head of the corporation, might well have been considered the proper custos, more especially as he was the very person to prove the poll on the former petition. Upon this ground therefore, which negatived the imputation of gross negligence, and upon the authority of the *Oxford case*, he submitted that time should be given.

The Committee resolved that further time should not be given to the petitioners to produce additional evidence in support of the poll.

Mr. *Harrison* having upon this abandoned his case, the Committee resolved further:—

That John Edwards, Esq. is duly elected a burgess to serve in this present Parliament, for the borough of Montgomery; that the petition of John Davies Corrie and Thomas Bowen does not appear to the Committee to be frivolous or vexatious; and that the opposition to the said petition does not appear to the Committee frivolous or vexatious.

[redacted]

[redacted]

[redacted]

of the sheriffs of Edinburgh, Haddington, and Linlithgow; and that the names of many other persons had been also improperly admitted into the register by the sheriff, who had voted for the sitting member; and the names of many others had, in like manner, been omitted from the register, who would otherwise have voted for the petitioner. It prayed, that the election and return might be declared void, and the petitioner declared duly elected. The petition further contained a charge of treating, but this was not persisted in.

The numbers on the poll were, for Sir Alexander Hope 267, Mr. Hope Vere 253, leaving a majority of 14 for the sitting member. To reduce this majority the counsel for the petitioner began by endeavouring to place on the poll certain votes, which had been rejected by the sheriff. Poll.

The first case was that of William Robb. He had sent in a claim to the schoolmaster, in which he claimed to vote as, "Proprietor of houses and land, at Longrig, Wm. Robb's case. A person, who had claimed as

persons who have sent in claims, and to affix it to the church-door. As in the English Act, an opportunity is given to other voters to object, notice of which must be delivered to the schoolmaster and to the party objected to. The claims and objections are to be transmitted by the schoolmaster to the sheriff's clerk; and the sheriff is directed to hold a court to adjudicate upon all claims. The principal point of difference between the two acts is, that in Scotland the sheriff is equally bound to investigate votes unobjected to, and those to which notice of objection has been served; but evidence sufficient to establish a primâ facie title will suffice to support the former, and evidence to contradict the title can only be admitted where due notice of objection has been given. From the decisions of the sheriff, a court of appeal is appointed. For the first year of registration, two or more sheriffs of counties specified in the act, were named as the court of appeal, for each particular county: for the future, the sheriffs liable to attendance on the circuit of the court of justiciary, are constituted the court of appeal from the sheriffs of each county within that circuit. From the sheriffs of the counties of Edinburgh, Haddington, and Linlithgow, an appeal lies to the three sheriffs of those counties jointly. Lastly, it is provided, that nothing contained in the act shall be held to limit or restrain the power of a committee of the House of Commons to take into consideration the validity of any vote or claim for registration admitted or rejected by the sheriff, or the judges of the court of appeal, and to alter the register, poll or return accordingly, in so far as concerns the election petitioned against.

a "proprietor," but turned out to be a leaseholder, having, on that ground, been rejected by the sheriff and the court of review; the Committee held, that he had claimed in the wrong character, but, was nevertheless entitled to vote, and they inserted his name as "tenant" on the register.

partly occupied by himself, and partly by his tenants, of the yearly value of 10*l.* and upwards, in the parish of Whitburn, in the county of Linlithgow." Before the sheriff, Robb proved a tack or lease of land for 999 years, which he held at a nominal rent: on this land he had built houses. The value of the premises was not disputed; but the sheriff, and afterwards the court of review, on an appeal from his decision, rejected the claim, on the ground that the claimant had been incorrectly described in the notice of claim, by the term "proprietor." The tack being what in the law of Scotland is termed a probative instrument, was put in before the Committee, without any proof being given of its execution, by virtue of the provision of the 25th section of the Scotch Reform Act.

Mr. Serjeant *Heath* and Mr. *Rutherford* in support of the vote.—The claim has been described with sufficient accuracy. Even if it should appear that, in the extreme rigour of technical nicety, there may have been a mis-statement, it will not be such as to defeat the right of the claimant. For an act, like the present, conferring an extensive franchise for the public benefit, and committed to the management of persons unacquainted with legal technicalities, must be liberally construed, so that the exercise of a public right shall not be frustrated by too rigid an adherence to legal precision. The term proprietor sufficiently designates the interest which the claimant has in the property in respect of which he asserts his right to vote. It is true that, in legal language, the term proprietor is generally used to designate the feudal owner, in contradistinction to the leaseholder or tenant; but the term proprietor is by no means a *nomen juris* in the law of Scotland, any more than in that of England, so strictly confined in its import as not to admit of any other signification. In a legal sense, as in common parlance, property in general denotes the interest which a man has in a given subject-matter; and thus, in the Scotch law, the term pro-

prietor of moveables is by no means unfrequent: in this sense, the term will apply to the case of a tenant as well as to that of the feudal proprietor. It is only when the word "*heritable*" is superadded, that the term exclusively applies to the feudal proprietor. A strong argument to show that the term proprietor has been correctly employed, may be derived from the nature of entails in Scotland. In strict entails the descent is secured in this way:—The lands are granted under condition that the tenant for life, or heir in possession, shall not alienate them. If he does so, the consequence is, first, that the act of alienation is void; secondly, that the estate becomes forfeited. Now it is held, that the act of leasing a property thus entailed, for more than nineteen years, by an heir in possession, is an act of alienation, which will carry with it the consequences just referred to.* This can proceed only upon the principle, that the grant of such a lease conveys a property in the estate to the grantee; for alienation necessarily implies a transfer of the property. Again, a conclusive argument may be drawn from the form of the oath, which is to be put to the registered voter at the time of polling. He is called upon to swear that he is "still the proprietor or occupant" of the property for which he is registered. Now the grantee of a long lease may not be in actual occupation, and may, notwithstanding, have an undoubted right to vote. In such case, in what character can he take the oath, except as proprietor? But whatever may be the pure legal signification of the term proprietor, at all events, in common parlance, a party having an interest in lands for 999 years, would be called the proprietor of them. If so, the description must be held to satisfy a statute which, as relating to a public franchise, and not to individual rights of property, must be construed with the utmost possible latitude.

Furthermore, it is obvious, from the provisions of the statute relative to the process of registration, that it

* Erskine's Inst. B. 3. tit. 8, s. 29.

never was intended by the legislature, that the nature of the claim should be described with the precision required in a declaration, where it becomes necessary to set forth the title of a party. It cannot be intended to give notice to persons entitled to object, of the precise nature of the interest, in respect of which the party claims; for the schoolmaster, on receipt of the notice, is only required to publish the name, designation, and residence of the claimant: the description of the claim forms no part of the notice which he is required to affix on the church-door; neither is he bound to show the notice of claim to any person. The objector consequently can have no opportunity of ascertaining the precise nature of the claim, until he meets the claimant before the sheriff: it cannot, therefore, be for the purpose of affording information to the objector, that any accuracy of statement can be required. By the 13th section it is provided, that a party, at the time of sending in his claim to the schoolmaster, may send in such deeds as may be necessary to establish his right; which, together with the notice, are to be transmitted by the schoolmaster to the sheriff: the only purpose, therefore, of requiring the nature of the claimant's interest to be set forth, must be to inform the sheriff of the purpose of the deeds. Provided that at the time of registration, the sheriff is enabled to ascertain that a sufficient right to vote has been established, to what purpose can a greater degree of technical accuracy be required, since no possible benefit can accrue to any party from requiring it? It will not be denied, that the party, in this case, is a tenant: yet, if the word "tenant" had been inserted, it would have given no distinct information, for there are various kinds of tenants. Again, it will be seen, that the different schedules of the act do not correspond, as regards the description of the voter's interest. In schedule (F) are to be found the words, "proprietor, tenant or occupant;" in schedule (G), "proprietor or tenant;" in schedule (I), "proprietor or occupant." From these variances it must be con-

cluded, that the forms referred to in the act are only directory. Further, by the 46th section it is provided, "that no misnomer or inaccurate description of any person or place, in any writing made in the form of any schedule to this act annexed, or in any list or register or notice made under authority of this act, shall in any way prevent or abridge the operation of this act, provided that such person or place shall be so designated, as to be commonly understood." Now either the language of this section must apply to the present case; or else, as it has been shown that the error in question cannot affect the real merits of the claim,—it must be concluded, that the legislature considered such an error as of too trifling a nature to require even the aid of this clause. In conclusion, it may be observed, that the majority of the sheriffs, who are advocates, were of opinion, that the claim, in this instance, was sufficient. There were four courts of review: the question arose in three of them. In two, a majority only of the sheriffs were of opinion that the claim was bad; in the third, the judges were unanimous that the claim was correct. On the whole, a majority were of the latter opinion.

Mr. *Follett*, contrà:—The decision of the sheriff, since confirmed by the court of appeal, was correct. The party here claimed as a "proprietor of houses, occupied partly by himself and partly by his tenants:" he claimed as proprietor or owner; but he proved only a demise of the land to himself as tenant. He was wrong, therefore, in claiming as a proprietor. It it clear that he is a leaseholder only, and not a freeholder, or what in Scotland would be termed the proprietor of the land; for it will be admitted, that there is no legal difference between the character of a lessee for 1000 years, and of one who holds for the shortest possible term. Now, in respect to the elective franchise, there is a wide distinction between the proprietor of the soil and the leaseholder. Prior to the passing of the Reform Act, the former possessed the exclusive right of voting in coun-

ties, both in England and Scotland. But in Scotland, it was necessary that the owner should hold immediately of the crown. In that country sub-infeudations still exist, and the proprietor of the land may hold either immediately of the crown, or by the process of sub-infeudation, mediately of a superior lord. In England, since the reign of Edward I., sub-infeudations have been abolished, and all proprietors of land hold immediately of the crown. The Scotch Reform Act removed the distinction, as regards the right of voting, between the two classes of proprietors; but, throughout its provisions, it retains a manifest distinction between proprietors and tenants. In England, the term tenant means something subordinate to the freehold; in Scotland, it means the leaseholder. The 9th section extends the franchise to "tenants in lands, houses, or other heritable subjects," of whom it enumerates five classes:—1stly, tenants who have held, for twelve months, tenements under leases for 57 years (exclusive of breaks), at the option of the landlord; or (2ndly) for the lifetime of the tenant; in both which cases, the clear yearly value of the tenement, after payment of rent, must be 10*l.*; 3rdly, tenants holding for a period of 19 years, where the yearly value of the tenant's interest is not less than 50*l.*; 4thly, where the tenant has been twelve months in actual occupation, and the yearly rent is not less than 50*l.*; 5thly, where the tenant, whatever his rent may be, has truly paid for his interest a consideration of not less than 300*l.* Throughout this clause, the term tenant is invariably used clearly to designate a party having an interest as leaseholder, and in manifest contradistinction to the owner or proprietor of the land.

The party in this case, therefore, having neglected this distinction, and having claimed as a proprietor, when, in fact, he turns out to be a tenant; the question now is, whether he is to be bound by his claim, or whether it is competent to him, when called on to make good his title, to substitute a different ground of quali-

fication to that of which he has himself given notice. The Reform Acts, in conferring the franchise, have made the registration of the voter, according to the terms of the act, the condition precedent to the exercise of the right. Now the process pointed out by the Scotch act is, that the party shall send in a claim to the schoolmaster, according to a form contained in the schedule annexed to the act. In that form a distinction is made between a proprietor, a tenant, and an occupier; and to the printed form, delivered to this claimant, printed directions were attached, calling on the party to state in which of these characters he claimed. Having made his selection, if it were open to him to substitute a different qualification, the whole of this preliminary proceeding would be rendered entirely useless. The decision of the Bedford Committee, who determined that the omission of the place of abode of the objector, in a notice of objection, given under the English Reform Act, invalidated the notice,* is an authority to show that the forms given by these acts must not be departed from. In like manner, the Annuity Act, having required annuities to be enrolled "in the form, or to the effect following," and the form subjoined, in the part which related to the attestation, containing the words, "A. B., of ——;" the Court of K. B. held the omission of the abode of the witnesses to be fatal.† But the authority of these decisions becomes still stronger, when it is observed, that the forms given in the acts just referred to, contain also the words, "or to the like effect," and that these words are omitted in the Scotch Reform Act: —it follows, that the forms of the latter act must be rigidly adhered to.

The language of the 17th section, which gives authority to the sheriff, sufficiently shows, that the qualification proved before that officer, must conform to the statement of the claim. It provides, that the sheriff's

* *Ante*, p. 44.

† *Darwin* v. *Lincoln*, 5 B. & A. 444; *Smith* v. *Pritchard*, *ibid.* 747.

clerk shall lay before the sheriff the several claims and objections which have been received by him, together with the titles and documents, which may have been lodged with any of the claims. Then the sheriff, beginning first with those claims to which no objections have been made, is to "proceed to examine the claims, and, wherever he is satisfied that the title produced affords primâ facie evidence of the validity of the claim," he is to write upon the claim the word "admit:" in like manner, "where the claims have not been accompanied by any written title, or the titles produced do not appear to him to afford primâ facie evidence in their favour," the sheriff "shall summarily inquire into and examine the evidence by which the parties, or their agents, may then be prepared to support them, and when he is satisfied that any claimant has made out a primâ facie case in support of his claim, he shall write on it the word 'admit.' But when the sheriff is not satisfied that there is primâ facie evidence in support of any such claim, he shall write upon it the word 'reject.'" It is impossible not to see that the claim referred to by this section,—the claim which the sheriff is to examine into, and with reference to which he is to consider the evidence adduced before him,—is the written claim sent in by the party. It is manifest, that the sheriff is not bound to receive evidence in support of any other than such claim. It follows, that the claimant cannot be at liberty to substitute any other qualification than that specified in his claim.

But apart from technical grounds, it is most important, that a party shall be confined to the claim which he has once sent in. To prevent an abuse of the franchise, a right is reserved to other voters of objecting to any individual claimant; but the objection is directed towards the qualification in respect of which the party has given notice of claim. It is like a declaration, and plea, and issue joined between the parties. In this case the claimant declares, that he claims as a proprietor; the

objector denies that he is qualified in that capacity: this is the issue to which the parties must be confined before the sheriff; nor can it be permitted to the claimant, if defeated on his original claim, to substitute another of a different description. But it is said, that the schoolmaster is not bound to publish the nature of the qualification, or to show the notices of claim. In practice, however, it is well known that, throughout Scotland, the schoolmasters have shown the notices. Moreover, the schoolmaster is a public officer; he is bound to preserve the notices; and there can be little doubt that he is bound to show them to persons entitled to object; for there would be little use in giving a right to object, if the objector were to be kept wholly in the dark as to the qualification on which the claimant intends to rely.

It has been said, that the 46th section applies here. It is sufficient to observe, that that clause refers to "any misnomer or inaccurate description of any person or place;" and that the matter in dispute is not a description either of "a person or place," but of the qualification in respect of which the party claims. The object of that clause was to remedy clerical inaccuracies; but the present is a manifest error in a material statement.

The Committee resolved, that William Robb was the tenant, and not the proprietor; and that it was their opinion that he was entitled, and ought to have been admitted, to vote at the late election for the county of Linlithgow.

They subsequently inserted his name on the register as tenant.*

Robt. Cunningham's case. The same decision adhered to, where the lease contained covenants to build and repair.

The next case was that of Robert Cunningham. He, like the former claimant, had claimed as a "proprietor," but had proved a lease of 99 years. He held at a rent of 5*l.* a-year, but the annual value was 45*l.* In the lease there were covenants to build and repair a house.

* See post, p. 371, note.

On the latter ground, Mr. *Follett* took a distinction between this case and the foregoing one. He assumed, that the ground of the previous decision had been, that the rent being nominal, and the term so extensive a one, the tenant might have mistaken the degree of interest which he possessed, and so have described himself as the proprietor and owner of the land. But in the present case, there could be no such error: for the tenant being bound to build on the land, must have been fully aware that the landlord had a beneficial interest in the estate, and could enter at any time during the continuance of the term, to evict the tenant, if the covenants were not fulfilled. The tenant, therefore, could have no pretence for describing himself as the proprietor of the estate.

The Counsel for the petitioner submitted, that this case fell precisely within the principle of the former decision.—The Committee allowed the vote.

Two other votes, rejected by the sheriff and court of review, under similar circumstances, were then gone into, and disputed before the Committee on the question of value: they were ultimately admitted.—A third was abandoned.

John Mair's case.

Where in a lease premises were described by reference to a plan, held that the lease might be received without the plan.

The next case was that of John Mair. This case stood on the same grounds as the preceding ones. The counsel for the petitioner gave in evidence a lease from the Earl of Buchan to the claimant for 99 years, at a rent of 6*s*. 1¾*d*. per annum, of a lot of ground in the village of Broxburn, "being No. 55 in the plan of the said village." The lease set forth the boundary of the premises fully, and stated, that John Smith had built a smithy on them. Mr. *Rutherford* objected to the reception of the lease in evidence, unless the plan to which it referred was produced. Mr. *Robertson* contended, that sufficient was contained in the lease to identify the premises, which rendered it unnecessary to produce the plan, more especially as the latter remained in the hands of the landlord, and was not accessible to the voter.

The Committee resolved, that the lease might be produced without the plan.

The lease being put in, proved the title of the voter to a part of the property in respect of which he claimed to be enrolled. To prove his title to the other part, a lease to one John Potter was put in, and a holograph * deed, written by John Potter, was then tendered, and Potter's son called to prove his handwriting.

Mr. *Robertson* objected to the admission of the deed, on the ground that the signature of the sheriff was not affixed to it.†

A deed not marked by the sheriff, held not admissible before the Committee.

Mr. Serjeant *Heath*, in support of the evidence, stated, that in the other cases the signature of the sheriff had been affixed to the deeds; but that in the present, the sheriff, after finding, on the production of the first deed, that the party had claimed as proprietor instead of tenant, and that the deed would support a claim in the latter character only, refused to look at the remaining documents, which, not being read by him, were consequently not noted. He submitted, that the Committee could not be deprived of their jurisdiction over the vote, by the omission of the sheriff, more especially as the 25th section of the Act expressly provides that nothing contained in it shall be held to limit or restrain the powers of a committee to take into consideration the validity of any vote or claim. It would obviously be an act of injustice to the claimant, if the omission of the sheriff should preclude him from producing proof of his qualification on the only opportunity afforded him of so doing.

* That is, a deed written entirely in the party's own handwriting.

† By the 19th section of the Scotch Reform Act, it is directed, that "the sheriff shall make a note of the statement of fact, and of the pleas founded on it, and of the names of the witnesses, and shall affix his signature to the deeds, writings, and other documents produced by the parties, in support of the claim or objection;" and the section goes on to declare that it shall not be competent to support any appeal upon any ground of fact or law, not set forth in such note of the sheriff, or to produce any witnesses not named in the said note, or any deeds, writings, or other documents to which the signature of the said sheriff is not affixed.

Mr. *Robertson*, in reply, observed that in addition to the general provision of the statute, there was a particular ground why a document of this nature should not be admitted, unless marked by the sheriff. A holograph deed need not be dated; consequently, nothing would be easier, than for parties, after ascertaining from the sheriff what was necessary to establish their title, to fabricate evidence of this nature to be produced before a committee. Another ground of objection might also be urged, which would be fatal to the admissibility of this evidence. The deed in question had only that day been stamped. Now, by the law of Scotland, as well as England, an unstamped deed could not be given in evidence; consequently, this deed could not have been used as evidence before the sheriff; and it was manifestly the intention of the act, that no evidence, which had not been adduced before the sheriff, should be available on any subsequent appeal from his decision.

Mr. Serjeant *Heath*, in reply to the last argument, observed that, according to the practice, both in England and Scotland, a deed might be stamped at any time, even down to the hour of trial. At trials at nisi prius in London, courts would even wait while an instrument was sent to be stamped.

The Committee resolved, that the deed could not be given in evidence.

Committee having refused to admit title deeds not marked by sheriff, held that parol evidence could not be given to prove the tenure.

The counsel for the petitioner then proposed to prove by parol testimony, that the voter had been in possession of the property contained in the lease to Potter for many years, and had constantly paid rent to the Earl of Buchan during that time. Mr. *Robertson* objected to this evidence, and contended, that parol evidence could not be received to prove a right to property held by a written title. The Committee refused to admit the evidence.

The counsel for the petitioner then offered to call the

agent of the Earl of Buchan, to prove from his books that the claimant was entered therein as tenant, and had paid rent to the Earl of Buchan for eight years, and that he was in possession of the property. But this evidence was also objected to on the same ground as the former, and rejected by the Committee. The vote was then abandoned.

David Daye's case.

Where a charge of bribery is intended to be made against a tendered vote, held, that the proof of the qualification should be gone into in the first instance.

A preliminary objection was taken by the counsel for the sitting member to going into the next case, (that of David Daye,) on the ground that the party was incapacitated by having received a bribe, which they proposed to prove in the first instance. The counsel for the petitioner insisted that they were, in the first place, entitled to have the name of the claimant inserted on the poll, if they could make out his qualification; and that it would afterwards be open to the opposite party to go into the charge of bribery. The Committee decided, that proof of title should be gone into in the first instance. This vote had been rejected by the sheriff on the same ground as the preceding ones. Proof of the qualification having been given, the counsel for the sitting member proceeded with the charge of bribery, to support which they called the plaintiff's factor and Daye himself. It appeared that a sum of money had been paid to Daye shortly before the election; but both witnesses affirmed, that this money had been paid in discharge of an old debt from the petitioner to Daye, against which the statute of limitations in Scotland had run.

The Committee admitted the vote.

May 4.

Jas. Ritchie's case.

Where a party had been rejected by the sheriff, but had not appealed to

The next case was that of James Ritchie. This claimant had been rejected by the sheriff, but had not appealed to the court of review. It was objected, that not having appealed to that court, it was not competent to him to appear before the Committee.—The 23rd section of the Reform Act had provided, that the

the court of review, the Committee refused to entertain his claim.

sheriff's judgments should, so long as they remained unaltered, be conclusive; but that it should be competent to any party to appeal, on giving notice to the sheriff's clerk; then the next section established the court of review, as the court to which appeals should be preferred. Where, therefore, no such appeal had been made, the judgment of the sheriff must remain conclusive. But even assuming that the power of the Committee to go into a vote so circumstanced was not absolutely taken away, it was still a question for their discretion, whether they would entertain the claim, inasmuch as it was manifestly the intention of the legislature, that parties aggrieved should, in the first instance, resort to the court of review, and that intention would be frustrated, if parties, without appealing to that court, should be permitted to apply at once to a Committee.

Mr. Serjeant *Heath*, in support of the vote:—The claimant is not precluded from appearing before a committee of the House of Commons. The language of the statute is not imperative, that he shall go before the court of review; it merely declares, that "it shall be competent" to the party to appeal to that court. Moreover, the 25th section has expressly provided against any limitation of the powers of a Committee. There may be very good reason why a party should object to going before the court of review. Before that court, he would be precluded from producing any evidence which he had not brought before the sheriff; yet, subsequently to the inquiry before the sheriff, he may be prepared with additional evidence, upon which he may see ground to rely. In such case an appeal to the court of review would be attended only with fruitless expense and trouble.

The chairman here stated, that the Committee were of opinion, that they possessed the power to entertain this claim, but that they thought the question one for their discretion. He intimated, that they entertained doubts as to the admissibility of additional evidence. If this party had gone before the court of review, he

would have been confined to the same evidence which he gave in the sheriff's court. He believed it was the practice in appeals from courts of law, to limit the parties to the evidence which had been given in the inferior court.

Mr. Serjeant *Heath*. On the granting of new trials by our courts, the parties are not confined to the evidence adduced at the former trial. So in appeals to the sessions, the parties are not limited to the evidence given before the justices below. They may produce any additional evidence which they consider will support their case.

Mr. *Robertson*, in reply, observed, that in appeals from the court of session to the House of Lords, the practice invariably was not to receive evidence, which had not been given before the court of session;* and such was the inflexible rule of all courts of appeal. Moreover, the question had already been incidentally decided by the Committee; for they had on the preceding day determined that they would not receive a deed to which the sheriff's signature had not been affixed. By this decision too, the ground alleged by the opposite party, as that on which they preferred to appeal to tho Committee, instead of applying to the intermediate court, was at once taken away.

The Committee resolved, that James Ritchie having neglected to appeal to the court of review, his case could not be gone into.

Robert Miller's vote.

Where the claimant had described his property, as situated "at Bathgate," and as "occupied by himself and tenants;" description held sufficient.

In the next case (that of Robert Miller) Mr. *Robertson* took an objection to the notice of claim. The claimant had in his notice stated his property to be situate "at Bathgate." It was objected, that Bathgate was a borough and barony of very considerable extent, having a large population; that it was, consequently, next to impossible to identify the property, and that a fuller

* Blacks. Com., vol. iii., p. 455.

description ought to have been given. In the second place, the claimant had described the property as partly in the occupation of himself and partly of his tenants, without any specification of the parts severally occupied. It was contended, that it was incumbent on him to state with precision by whom the premises were occupied. Both these objections had been taken before the sheriff and the court of appeal: the latter court held the first valid, and in consequence rejected the claim. Both objections were over-ruled by the Committee.

Where deeds had not been marked by the sheriff, but it did not appear that the sheriff had refused to mark them, evidence that the deeds had been laid before the sheriff refused.

The title deeds of the claimant were then put in; but on the production, it appeared that they had not been marked by the sheriff; the reception of them in evidence was in consequence objected to. The Committee, after they had deliberated for some time, inquired of the counsel, whether the claimant had had an opportunity of producing the papers necessary to prove his title for the consideration of the sheriff depute? Which question being answered in the affirmative, the Committee informed the counsel, that the documents proposed to be given in evidence could not be received.

The counsel for the petitioner then offered to prove that the papers in question were laid on the table before the sheriff, and that they were referred to and discussed, but not marked by him. The Committee then inquired, whether the sheriff had refused to mark them? to which Mr. Serjeant *Heath* replied, that "he believed not." The Committee observed, that the claimant should have applied to have the papers marked; and determined, that the documents could not be received. The vote was thereupon abandoned.

Rev. Robert Rennie's case. Where a voter had not been objected to before the sheriff, held, that his vote could not be

The counsel for the petitioner then proposed to strike off the poll the vote of the Rev. Robert Rennie, who had voted for the sitting member. This voter's name stood on the register; it appeared that no objection had been taken to his claim before the sheriff. On the latter ground, Mr. *Robertson* contended that the vote

could not now be disturbed. He relied on the decisions of the former Committees on the English Reform Act, and on the previous decisions of this Committee, who had (on a principle which would equally apply in this case) decided that evidence not produced before the sheriff could not be received before the Committee.

objected to before a Committee, even though the sheriff should not have insisted on sufficent primâ facie evidence of title.

Mr. *Rutherford*, contrà, stated, that the sheriff had not insisted, as he was bound under the act to do, on a primâ facie title being made out by the claimant.* No objection, however, having been taken to the claim, no opportunity was afforded of appealing to the court of review. Under such circumstances,—as it was impossible to suppose, that it was intended that the judgments of the sheriff, where manifestly wrong, should be without control, and, as there was no tribunal by whom the wrong could be redressed, except a committee,—it was most essential to the ends of justice, that the Committee should interfere; otherwise it would be in the power of the sheriff to admit every vote not objected to, whether established by evidence or not, and there would be no redress from his decisions.

A member of the Committee then inquired, whether the petitioner was a voter for the county, and could have objected? He was answered in the affirmative.

The Committee resolved, that the Rev. Robert Rennie not having been objected to before the sheriff, they would not enter into his case.

Rev. A. D. Tait's case.

Where a claimant, not objected to, had been rejected by the sheriff, but subsequently admitted on appeal by the court of review; held, that his vote

The counsel for the petitioner then attempted to strike off the poll the vote of the Rev. Adam Duncan Tait. This voter had not been objected to before the sheriff, but had been rejected by that officer, as not having made out a sufficient title. He had thereupon appealed to

* No evidence was given of this fact as the decision of the Committee rendered it useless. The fact referred to was, that the sheriff had taken cognizance of the claimant being the minister of the parish, without requiring proof of his appointment.

was duly elected; and that neither the petition nor the opposition to it were frivolous and vexatious. The Committee in their report further informed the House, "that they had altered the register and poll taken at such election, by inserting the name of William Robb, &c. (four others), as having a right to vote at such election." *

* A different course of proceeding is established by the English and Scotch Reform Acts, as to the altering of the register in consequence of the decisions of Committees. By the English act, section 60, Committees are directed to alter the poll, and report their determination to the House; and the House shall thereupon carry such determination into effect, and the return shall be amended, or the election be declared void, as the case may be, and the register corrected accordingly. But under the Scotch act, committees have authority themselves to alter the register, 2 & 3 W. 4, c. 65, s. 25.

CASE XIX.

CITY OF LINCOLN.

The Committee was chosen on the 2nd May, 1833, and consisted of the following members.

George Wilbraham, Esq. (Chairman,) *South Cheshire.*

W. Peter, Esq. *Bodmin.*	Hon. George V. Vernon, *South Derby.*
W. S. Blackstone, Esq. *Wallingford.*	John Lloyd Vaughan Watkins, Esq. *Brecon.*
Hon. George Keppel, *East Norfolk.*	George W. Wood, Esq. *South Lancashire.*
Charles Philip Yorke, Esq. *Cambridgeshire.*	Sir Wm. John Brown Folkes, *West Norfolk.*
Charles Hanbury Tracey, Esq. *Tewkesbury.*	Hon. Hugh Arbuthnot, *Kincardineshire.*

Petitioner—Charles Delaet Waldo Sibthorpe, Esq.
Sitting Member petitioned against—Edward Earle Lytton Bulwer, Esq.
Counsel for the Petitioner—Mr. Harrison, Mr. Joy, and Mr. Preston.
Agents—Messrs. Macdougal and Bainbrigge.
Counsel for the Sitting Member—Mr. Follett and Mr. Cockburn.
Agent—Mr. Beavan.

THE Petition, which was preferred by the unsuccessful candidate, proceeded solely on the ground of the want of a sufficient qualification.

Particular of qualification.

In the particular delivered in by the sitting member to the clerk of the House, he declared that he made out his qualification by reason of his having, holding, and enjoying, 1stly, certain lands, called Lizzard Connel, in the parish of Galbally, barony of Costlea, and county of Limerick, in the possession of Moses Fitzgerald, and demised to him for three lives, renewable for ever, at a

fine of 3*l.* on the dropping of each life, by a lease bearing date the 18th of Sept. 1824, granted by Rosina Ann Wheeler, now the wife of the said Edward E. L. Bulwer, at the annual rent of 195*l.* 9*s.* 6*d.* Irish currency, or 183*l.* 4*s.* 1*d.* English currency; 2ndly, other lands, called Lizzard Connell, in the occupation of Mary Odell, and her under-tenants, under a lease, bearing date 17th of August, 1810, granted by Francis Wheeler, Esq., to one William Odell, at the yearly rent of 26*l.* Irish currency, or 24*l.* English currency; 3rdly, a clear yearly rent charge of 180*l.*, payable to Mr. Bulwer, during his life, and not redeemable, and charged upon two messuages, &c., at Norwood Green, in the parish of Hayes, in the county of Middlesex, in the respective occupation of Paul Storr and —— Bailie, and also upon the premises and hereditaments in the occupation of Clarissa Thackwaite, situate at Norwood Green, by virtue of an indenture, bearing date the 4th of December, 1832, between Clarissa Thackwaite and the said E. E. L. Bulwer, in consideration of 1950*l.* paid to the said Clarissa Thackwaite, the witness to the execution of which indenture and the payment of which consideration was John P. Beavan, Esq., of Sackville Street, Middlesex; 4thly, a clear yearly rent charge of 30*l.*, payable to Mr. Bulwer, issuing out of and charged on certain parcels of land, called the Shales, in the parish of Burnham, in the county of Berks, and upon two small parcels of land adjoining, called Alder Copse and Burgess Copse.

Mr. *Joy*, in opening the case for the petitioner, stated, that the counsel for the petitioner were placed in some difficulty, in consequence of their not being entitled to call on the sitting member to prove his qualification, while, from the loose statement of particulars given in by the sitting member, they had been unable to obtain a clue to part of the property on which the qualification was professed to be grounded. The petitioner had however given notice to the sitting member to produce certain deeds relating to his title to the pro-

perty in question, on the production of which, or the admission of secondary evidence in their absence, the defective nature of the qualification would, no doubt, become manifest; but that, at all events, the counsel for the petitioner would be prepared to contend on the statement of particulars given in by the sitting member himself, that the qualification was insufficient, inasmuch as it appeared on the face of that statement, that the sitting member had no estate for life in the lands in Ireland.

A notice had been served on the solicitor of the sitting member to produce,—1stly, the will, or a probate copy of the will, of Francis Wheeler, Esq., the father of the wife of Mr. Bulwer; 2ndly, any settlement made in contemplation of, or subsequently to, Mr. Bulwer's marriage; 3rdly, the indenture, dated 4th of December, 1832, made between Clarissa Thackwaite and Mr. Bulwer, and all leases of the property out of which the rent charge, mentioned in the indenture, issued; 4thly, all deeds or instruments, whereby he derived a title to the rent charge of 30*l.*, charged upon the pieces of land, called the Shales, in the parish of Burnham, and the two small pieces of land adjoining the Shales, and any leases or agreements for letting the same.

The agent for the sitting member, being called upon to produce the deeds pursuant to the notice, delivered in a large bundle of deeds, comprising several which were not specified in the notice above-mentioned.

Mr. *Preston*, after having inspected the deeds, was proceeding to argue against the validity of the qualification, on the statement of particulars of the sitting member, when he was interrupted by Mr. *Follett*, who observed, that he should resist the admission of any evidence, after the case had once been summed up on the part of the petitioner, and should object to his raising any argument on the deeds until the execution of them had been duly proved.

The Committee appearing to acquiesce in this view, Mr. *Joy* then called Mr. Beavan, the agent of the sitting

member, by whom the deed had been produced, handed to him two of the deeds, and asked him, whether those were the deeds referred to in the particular of the sitting member? Mr. Beavan replied, that he had never read or seen the deeds until they had been opened that day. Mr. *Joy* then tendered the two deeds as evidence; but Mr. *Follett* objected to their reception, until the execution of them should first have been proved. The Committee, after argument, determined that the deeds should not be read till proved.

Held, that title deeds produced by the sitting member cannot be used by the petitioner till their execution had been proved.

Mr. *Preston*, for the petitioner, then proposed to argue that, upon the face of the particular delivered in by the sitting member, the qualification was defective, reserving to himself, if the decision of the Committee should be against him on this point, the right to call witnesses subsequently to prove the other parts of his case.

Held, that it was not competent to a petitioner to impugn the qualification of a sitting member on one ground; and if the Committee should decide in favour of the qualification on that ground, then to proceed to another.

Mr. *Follett*, on the other hand, submitted, that the opposite party must go through their case, contending, that to allow the counsel for the petitioner first to make an attack on the sitting member, and if that failed, to try another, would be contrary to the established and uniform practice of Committees.

The Committee determined, that the counsel for the petitioner should proceed, and go through with their case.

Mr. *Harrison*, for the petitioner, then applied for an adjournment of the case, in order to enable the petitioner to procure the attesting witnesses to the deeds in question. The application being resisted by the counsel for the sitting member, the Committee, after deliberating, desired that the question might be re-argued, the counsel directing their attention to the question, whether due diligence had been used in endeavouring to obtain evidence as to the attestation of the deeds.

Where deeds relating to lands in Ireland had been produced by the sitting member, but the petitioner was not prepared to prove the execution of the deeds, the Committee decided that due diligence had not been used, and refused to grant time to procure the attesting witnesses.

Mr. *Harrison*:—It is in the discretion of the Committee to grant the delay sought for; and the present is certainly a case in which that discretion will be most pro-

perly exercised. For, as the resolution of the House does not require the names of attesting witnesses to deeds to be stated in the particular of the sitting member, when the property has been held for more than three years, and, as that part of Mr. Bulwer's estate to which these deeds relate, has been held during that period, the names of the attesting witnesses are not set forth in the particulars. It was not, therefore, till the deeds were produced before the Committee, that the petitioner was enabled to ascertain who were the attesting witnesses, or to produce them before the Committee. He had no means of procuring a previous inspection of the deeds; for not even the Speaker's warrant could compel a party to produce his private deeds, for the inspection of his opponent, except on the trial of the petition before the Committee. Consequently, the petitioner has been guilty of no laches; nor can he be said not to have used due diligence, when it is obvious that there were no steps which he could take. Applications of this nature have been frequently acceded to, and an opportunity afforded of fetching witnesses from a distance, more especially, where (as in the present instance) the party making the application had been taken by surprise. Such a course was adopted in the cases of *Oxford* * and *Londonderry*,† of the present session.

Mr. *Follett* and Mr. *Cockburn*, contrà:—The cases which have been cited, are cases in which the parties were taken by surprise; but in this case there can be no ground for any such indulgence. The petitioner in this case either knew of the defect in the title of the sitting member, on which he now relies, or he did not. If he did, it was incumbent on him to be prepared to prove it. If he did not, then it is obvious, that he has adopted this proceeding solely for the chance of taking advantage of some defect, which he might discover on the production of the deeds of the sitting member. Un-

* *Ante.* † *Ante.*

doubtedly, the Committee will not, by granting the indulgence now sought, give a sanction to the bringing what may be called fishing or speculative petitions—preferred not upon any reasonable or well founded belief in the insufficiency of the qualification, but upon the mere chance of detecting some flaw in the title of the sitting member, by compelling the production of his deeds. But the Committee have made the question whether the petitioner has used due diligence to obtain evidence as to the attestation of the deeds, an ingredient in the present consideration. It is clear, that he has not, for the deeds in question relate to property in Ireland, and in Ireland all deeds are registered. The petitioner might, therefore, have ascertained without difficulty who were the attesting witnesses, and have produced them. But it is clear that the petitioner never entertained any intention of having recourse to these deeds; for they are not specified in the notice to produce;* from which it is obvious, that the opposite party were not prepared to give secondary evidence of their contents. In fact, it was only on the accidental production of those deeds, that the counsel for the petitioner, imagining that they had discovered in them something of which they might avail themselves, for the first time thought of putting them in evidence.

The Committee determined that the petitioner should proceed forthwith with his case.

Mr. Beavan, the agent of the sitting member, and the attesting witness to the rent charge, was then called, and in answer to questions by the counsel for the petitioner, stated, that part of the property on which the rent charge was secured was now let at a rent amounting to 136*l.* 10*s.* per annum: he estimated the remainder, which was in the occupation of the grantee, at 30*l.* per annum: he stated, that the lease of part of the property would expire in about three months, and that

* On reference to the contents of the notice to produce, (*ante*, p. 374), it will be seen that the deeds relating to the Irish property were not specified in the notice.

16*l.* 10*s.* additional rent had been offered for it. He further stated, that the grant of the rent charge had not been registered or enrolled. An office copy of a judgment against Mr. Bulwer for 700*l.* was then put in and proved.*

The question of the admissibility of the deed produced by the sitting member, without proof of execution being given by the opposite party, allowed to be re-argued. Held, after second argument, that such deeds could not be read in evidence.

Mr. *Harrison* now proposed to give parol evidence of the contents of one of the deeds, which the Committee had previously decided should not be read; but this course was objected to by Mr. *Cockburn*, on the ground, that secondary evidence of the contents of a deed could only be given when the deed itself was not produced. Mr. *Harrison* then withdrew his application, and called on the Committee to allow him to re-argue the question of the admissibility of the deeds, without the production of the attesting witnesses. He observed, that committees occasionally allowed questions of difficulty and importance to be argued a second time; as an instance of which he cited the *Fowey case*:† he observed, that several authorities had not been cited in the former argument, which might possibly have induced the Committee to come to a different conclusion. The application was resisted by the opposite counsel, but, after some discussion, the Committee consented that the question should be re-argued by one counsel on each side.

Mr. *Follett*, for the sitting member:—It is an invariable rule of law, that "whenever a deed or other instrument is subscribed by an attesting witness, such witness must be called to prove its execution, and his testimony cannot be dispensed with."‡ And this rule holds good even in a case where a defendant has admitted the execution of a deed in an answer to a bill in Chancery. Such is the every-day and unvarying

* The counsel for the sitting member were prepared to prove that this judgment had been entered up against Mr. Bulwer, merely as security for an annuity granted by a friend, and that nothing was now due upon it: but this proof was rendered unnecessary, by the decided manifestation of opinion on the part of the Committee, that such a judgment could in no wise affect the qualification.

† Corb. & Dan. 145. ‡ Roscoe on Evidence, p. 64.

practice of courts of law; and it has been adopted by committees, who, in matters of evidence, are bound by the ordinary rules of law. Is there then any thing to take this case out of the general rule? The circumstance of the deed coming from the custody of the sitting member, will not have that effect; for the general rule above referred to applies even to cases where a deed is produced on notice given by the opposite party. In the case of *Gordon* v. *Secretan*,* Lord Ellenborough said, "it was not enough to give notice to the opposite party to produce an instrument in his hands, in order to dispense with any further proof of it by the party giving the notice, and that the production of it at the trial, in pursuance of such notice, did not supersede the necessity of proving it by one of the attesting witnesses, if any, as in ordinary cases." It is true in cases, where deeds are produced by a party who claims under them, the proof of the execution has been dispensed with; but this is always where notice to produce has been first given: in no instance has the proof of execution been dispensed with, where no notice to produce had been given. Now in this case, no notice to produce has been given to the sitting member: on reference to the notice, it will be seen that the deeds under discussion are not included in it. These deeds were accidentally produced: having been produced, the petitioner is at liberty to make use of them, but not until, in conformity with the rule of law, he has proved the execution by the production of the attesting witnesses.

Mr. *Harrison*, contrà:—The argument founded on the want of notice is untenable. Assuming that the deeds need not have been produced without notice, yet having once been produced, the production of them amounts to a waiver of notice. But the truth is, that the cases in which it has been held that proof of execution was not necessary, have proceeded not on the fact of notice having been given, but on the ground that the deeds

* 8 East, 548.

were produced by a party claiming under them. The cases of *Bowles* v. *Langworthy*,* *Rex* v. *Middlezoy*,† *Orr* v. *Morrice*,‡ *Pearce* v. *Hooper*,§ are authorities immediately in point. In the last case, Sir James Mansfield, speaking with reference to a case where a man was called upon to produce a deed under which he held an estate says, "the plaintiff has no interest in the fee-simple of the estate, if the deed does not convey it; if then he produces the deed under which he claims, shall it not be taken as a good deed, so far as relates to the execution, as against himself?" In *Burnet* v. *Lynch*,‖ an action was brought for the breach of covenants in a lease. The plaintiff proved a counterpart. The defendant produced the original lease, and then contended, that the plaintiff ought to prove the execution of it by the attesting witnesses. But both Lord Wynford at nisi prius, and the court of King's Bench, on a motion for a new trial, held that as the lease was produced by a party claiming a beneficial interest under it, proof of the execution was unnecessary. In that case too, no notice to produce had been given, which gets rid of the argument of the other side, founded on the absence of notice in the present instance. The authorities cited, are precisely applicable to the present case; for the qualification of the sitting member depends on the deed in question. Consequently, as it is produced by him, —no matter whether with notice or without—further proof of its execution becomes wholly unnecessary.

Mr. *Follett*, in reply:—The argument on the other side proceeds upon a fallacy—namely, that the deeds are produced by the sitting member in support of his qualification. The sitting member is not called on to support his qualification at all: he is not required to produce evidence in support of his title: he may remain wholly passive. He has taken the necessary oath at the table of the House, and his qualification must be pre-

* 5 T. R. 365. † 2 T. R. 43. ‡ 3 B & B. 139.
§ 3 Taunt. 62. ‖ 6 B. & A. 589.

sumed to be good, until the contrary be shown. In the *Coventry case** of this session, it was fully established, that the whole burden of proof lay with the party who impeached the qualification, and that it was with the petitioner, not with the sitting member, to call attesting witnesses to deeds on which the qualification rested. The cases relied on by the other side do not, therefore, apply, being cases in which the deeds in dispute were essential to the title of the party by whom they were produced. In all those cases a notice to produce had been given, except in that of *Burnet* v. *Lynch*; and that case does not apply, for there a counterpart of the lease had been put in and proved. Moreover, at present, the nature of the deed in question is not judicially known to the Committee. Whether or not, it is a document which may be essential to the qualification of the sitting member, can only be known when it comes to be read. As the petitioner proposes to avail himself of it in evidence, and the burden of proof in this case rests on the petitioner, it is incumbent on him to prove the execution, according to the invariable rule of evidence. In conclusion, it should be observed that the objection taken in the present instance rests by no means on technical grounds alone. The effect of the attempt now made by the petitioner, if sanctioned by the Committee, would be to subject the title deeds of every member of parliament to inspection. A general notice to produce title deeds might in every case be given, and the title of every member be exposed to the scrutiny of conveyancers and lawyers. The injustice and inconvenience of such a proceeding is too manifest to require to be pointed out: the legislature cannot have intended, and the Committee will not sanction such a course. The petitioner must, therefore, be held to strict legal proof, as in ordinary cases. If he had bonâ fide disbelieved the qualification of the sitting member, and had relied on this deed, he would have given notice to produce it, and would have been pre-

* *Ante.*

pared to prove its execution. If, on the other hand, as is obviously the case, he has instituted this proceeding upon merely speculative grounds, the Committee will not, assuredly, relax in his favour the ordinary and inflexible rules of law.

The Committee determined that the deed should not be read.

Held, that an argument might be raised as to the insufficiency of the qualification, on the particulars given in by the sitting member.

Mr. *Preston* was then proceeding to argue, that on the face of the particulars given by the sitting member, the qualification was insufficient, when he was interrupted by the counsel for the sitting member, who contended that no argument could be raised on the particular; that the sitting member could not be prejudiced by a statement made in conformity with the rules of the House; that the manifest object of the resolution of 1717 was to afford an opportunity of investigating the qualification of a member, to afford access to deeds, where property had been recently acquired; but that it never could have been intended to dispense with the necessity of a petitioner's proving his case according to the general rules of evidence.

On the part of the petitioner, it was contended that the statement of a sitting member, made in conformity to a rule of the House, must be considered binding upon him. At all events, such a statement might be looked upon as an admission made by a party, which was always received as evidence against him. If the member had stated that he had an estate of 200*l.* a-year only, could any doubt be entertained that such a statement would be fatal to the qualification?

The Committee, after a short discussion, overruled the objection.

The counsel for the sitting member then proposed to recall Mr. Beavan, to prove that Mr. Bulwer had had a child by his marriage; but this the Committee refused to suffer them to do. The fact was, however, after admitted.

Mr. *Preston* then proceeded to sum up the case for

the petitioner. He argued as follows:—Every member of parliament is required "to have an estate, freehold or copyhold for his own life, or for some greater estate either in law or equity, to or for his own use or benefit, of or in lands, tenements, or hereditaments, over and above what will satisfy and clear all incumbrances affecting the same, of the annual value of 300*l.* above reprises."* In order to make up the necessary amount of qualification, the sitting member relies on certain property in Ireland, producing annually 207*l.* 4*s.* 1*d.*, and two annuities, secured on property in England, amounting to 210*l.* a-year. If, therefore, his title, either to the Irish estate or the English annuities should fail, the qualification will be defective from the insufficiency of the amount.

Firstly, as respects the Irish estate:—From the particular of the sitting member, it appears that the leases to the present lessees were granted by his wife before her marriage, and by his wife's father, now deceased. It is obvious, therefore, that the sitting member is possessed of this estate in right of his wife. But the statute of Anne is silent as to an estate held in right of a wife conferring any qualification; and where the legislature has intended that an estate so held should have that effect, it has expressly mentioned it. It has done so in the statutes relative to the killing of game,† and to the qualification of commissioners of turnpike trusts.‡ On the contrary, the statute now under consideration virtually excludes such an estate from conferring a qualification; for it requires that the estate shall be for the member's "own life, or for some greater estate." But an estate held for the life of the wife, is not an estate for the life of the husband; and it is obviously not a greater estate. It has been suggested, that Mr. Bulwer has had a child by his marriage; and

* 9 Anne, c. 5.
† 1 Jac. 1, c. 27, s. 3; 22 & 23 Car. 2, c. 25, s. 3.
‡ 3 Geo. 2, c. 126, s. 62.

it is meant to be contended, that he is in consequence entitled to this estate for his life, as tenant by the courtesy. The argument would hold good if the estate were in possession; but it is stated in the particular to be let on lease for lives, renewable for ever. Now it is a well established position in law, that there cannot be courtesy of the reversion of a freehold expectant on an estate for life. This position is fully established by the authority of Comyns' Digest. tit. Baron and Feme, letter E., Bacon's Abridg., same title, letter C., s. 1, and the cases of *Polybank* v. *Hawkins*,* and *Doe* v. *Rivers*.†

But even if the title of the sitting member to the Irish estate could be sustained, it will be shown that the annuities are open to objections, which must be fatal to the qualification. It is admitted, that the annuity from Miss Thackwaite, which amounts to 180*l.* a-year, has not been enrolled. But, according to the provisions of the annuity act,‡ a memorial of the deed by which an annuity is granted, must be enrolled in chancery within thirty days after its execution; and when this is not done, the annuity becomes, to all intents and purposes, null and void, except where it is secured on property of equal or greater amount than the annuity itself. But this case does not fall within the exception; for part of the property is let at a yearly rent of 136*l.* 10*s.*, and the remainder is estimated at 30*l.* a-year: the annual value is, therefore, less than the amount of the annuity. Moreover, though this annuity is secured on land situate in Middlesex, and is consequently within the operation of the registry act,§ it has not been registered: this also must be fatal to its validity. The smaller annuity of 30*l.* a-year is not stated in the particular to be for the life of the sitting member. It cannot, therefore, avail him in making out his qualification. But even assuming that either of these annuities could be

* Doug. 329.
† 7 T. R. 267.
‡ 53 Geo. 3, c. 141, s. 2.
§ 7 Anne, c. 20, s. 1.

made available for that purpose, it must not be forgotten that a judgment against the sitting member for 700*l.* has been proved. This judgment may, if the creditor pleases, be made available against the land. The amount of it must, therefore, be deducted from that of the annuities; after which it cannot be said that the sitting member has a sufficient estate "above reprises" to support his qualification.

In conclusion, it should be observed, that the sitting member has in his particular stated the lands, on which he founds his qualification, to be situate in different parishes from those mentioned in his statement on taking his seat in the House,—a circumstance strongly calculated to raise a doubt as to the reality and sufficiency of the qualification.

Mr. *Follett*, for the sitting member:—The objection that the sitting member has not stated in the particular of his qualification the names of the same parishes as he gave in at the table of the House, cannot affect the present question. In the first place, the account given by Mr. Bulwer at the table of the House, is not at present in evidence before the Committee. They can have no judicial knowledge, therefore, whether the particular correspond with that statement or not. Even if it should not, it would be immaterial; for all that is required is, that the member shall possess a certain estate: he may mention one part of his property when he takes his seat; he may rely on another when his qualification is called in question. If his return be petitioned against, he is called upon to give in a statement, containing a rental or particular of the lands, tenements, or hereditaments, by which he makes out his qualification. This, however, is the full extent of what he is called upon to do: he is not required to state from whence he derives the property, or by what title he holds it—whether in his own right or that of his wife. Mr. Bulwer, in his particular, has stated considerably more than he was required to do: he has stated not

only by whom the lands in question are held and at what rent, but he has also stated under what leases the present occupiers hold: upon this statement it appears that part of the property is subject to a lease, made by his wife previously to her marriage. Now it is not pretended that the sitting member is not possessed of the property, but from this statement, without any evidence whatsoever having been adduced, the Committee are called upon to conclude that he holds it, not in his own right, but in that of his wife. This is, however, by no means necessarily the case. Mr. Bulwer may have purchased the property of his wife previously to his marriage;—nothing is more probable, than that it may have been settled upon him for life at his marriage. The Committee will not assume any thing adverse to the qualification which has not been proved, while an opposite construction is open to them: on the contrary, every thing is to be presumed in favour of the sitting member. The same argument applies to another part of the property stated in the particular to be subject to a lease made by Mr. Wheeler. It is assumed that that gentleman was the father of Mrs. Bulwer; but there is no proof that such is the fact, and until proved, neither that, nor any other fact adverse to the sitting member, is to be taken for granted. For aught that appears, Mr. Bulwer may have purchased this property from Mr. Wheeler, or if that gentleman was Mrs. Bulwer's father, he may have left it to his daughter till her marriage, and afterwards to her husband for life; or Mr. Bulwer may have acquired the property by his marriage settlement. While the case rests on presumptions, those alone can be accepted which are favourable to the qualification.

Assuming, however, for the sake of argument, that the facts are as alleged by the other side, the sitting member will still have a sufficient interest in this property to support his qualification. It appears, from the particular, that the property in question is let on a

lease for lives renewable for ever, with a rent reserved. It is admitted that Mr. Bulwer has a child by his marriage capable of inheriting. He is, therefore, tenant by the courtesy of the rent:* consequently, he has a freehold therein for his own life; which is sufficient to satisfy the statute.

The objections to the rent charge secured on the English property are wholly untenable. The necessity for the enrolment of annuities under the annuity acts, exists only where the lands out of which the annuity issues are not of equal value with the annuity. In this case the land is of greater value: the annuity granted by Miss Thackwaite is 180*l.* per annum; the value of the land has been proved to be 187*l.* per annum. It is true, the rent at which it is let is of less amount; but it is not rent, but value, which is the ground of exception. Neither is it any wise material that this annuity has not been registered. For the Registry Act makes an annuity not registered invalid only as regards subsequent purchasers: it still remains equally binding between the original parties, which is the only question now under consideration. As regards the annuity of 30*l.* a-year, it is objected that the particular does not state it to have been granted to Mr. Bulwer for life. It is enough to answer, that such a statement would have been unnecessary, not being required by the resolution of 1717. It is stated in the particular, that the qualification consists of a rent charge, and a particular of the property from which that rent charge issues is set forth. This is sufficient to satisfy the resolution of the House; and the Committee will presume that the rent charge is for the life of the sitting member, more especially as the deeds relating to this rent charge have been produced, and no attempt has been made by the opposite party to impugn the fact.

Lastly, as to the judgment which has been proved

* Butler, Co. Litt. 29 a., note 7.

by the opposite side. If it had been deemed necessary, the sitting member was prepared with evidence to show that this judgment had been confessed as security for a friend, and that not a farthing was due upon it. But a moment's consideration would show that such a judgment can have no effect whatsoever on the present occasion. Even supposing the judgment could affect the real estate of Mr. Bulwer, its operation would clearly not be confined to the property mentioned in the particular, but would extend over whatever real estate he might possess. Now a member is not called upon to state in his particular all the property he possesses: he would, therefore, confine himself to a statement of property sufficient to support the qualification. But the Committee will not presume that the sitting member possesses no other property than that set forth in his particular; and unless they do so, they cannot look upon the judgment as reducing the amount of the qualification. Assuming, however, that it could, and that interest were due on it at the rate of 10 per cent., this would amount only to 70*l.* per annum. Now the property proved in the present case amounts to 417*l.* per annum; consequently, there would still remain 347*l.* per annum. But in point of fact, it cannot for a moment be supposed that such a judgment can affect the qualification. A judgment is altogether different from a mortgage: for that is an incumbrance on a particular property; whereas a mere judgment will not affect the land at all. It is true, the party who has obtained the judgment may sue out an elegit, and by virtue of it take possession of half the lands; but until he does so, the judgment will give him no claim whatsoever on those lands. This judgment cannot, therefore, affect the qualification: indeed to rake up a judgment of this sort for the purpose of impeaching a freehold for parliamentary purposes, is a proceeding altogether unprecedented and unheard of.

The Committee resolved that the sitting member was duly elected, and ought to have been returned; and that

neither the petition nor the opposition to it appeared to be frivolous or vexatious.*

* Mr. Follett, at the conclusion of his address, pressed strongly on the Committee the propriety of declaring the petition to be frivolous and vexatious, on the ground that it had been preferred on speculative grounds alone, without any bonâ fide or well grounded belief on the part of the petitioner, that the sitting member was not qualified; and he urged the hardship and injustice arising to a sitting member, from being exposed to a similar proceeding. It was afterwards understood, that the only ground on which the Committee abstained from declaring the petition to be frivolous and vexatious, was the refusal on the part of the sitting member to allow the disputed deeds to be read without proof of their execution.

CASE XX.

TOWN OF GALWAY.

The Committee was chosen on Tuesday the 23rd of April, and consisted of the following members :—

Lord Viscount Stormont, (Chairman,) *Norwich.*

Robert Ingham, Esq. *Shields, South.*	Philip H. Howard, Esq. *Carlisle.*
John Martin, Esq. *Tewksbury.*	Colonel Davies, *Worcester.*
Richard Godson, Esq. *Kidderminster.*	Joseph Neeld, Esq. *Chippenham.*
Richard N. Shawe, Esq. *Suffolk, East.*	Lord Charles James Fox Russell, *Bedfordshire.*
James Grattan, Esq. *Wicklow County.*	H. W. Tancred, Esq. *Banbury.*

Petitioners—(1) Martin Joseph Blake Esq., (2) Valentine Blake, Esq., and electors.

Sitting Members—Andrew Henry Lynch, and Lachlan Maclachlan, Esqrs.

Counsel for the Petitioners—Mr. Serjeant Merewether and Mr. Rogers.

Agent—Mr. Stephens.

Counsel for the Sitting Members—Messrs. Harrision, Follett, Campbell, and Austin.

Agents—Messrs. Burfoot.

First petition.

In this case there were two petitions—the first, was that of Martin Joseph Blake, Esq., which stated, that at the last election for the town of Galway, Andrew Henry Lynch, Esq., Lachlan Maclachlan, Esq., Valentine Blake, Esq., and the petitioner were candidates; that the petitioner had a majority of legal votes, and would have been returned, but for the conduct of the returning officers, who admitted to vote, on the part of the sitting members, persons who had been unduly

registered, and were otherwise disqualified, and rejected other legal votes, duly tendered on the part of the petitioner. It also contained charges of undue influence exercised by the corporation of Galway, and charges of bribery and treating.—The second petition was that of Valentine Blake, Esq., and certain electors: it stated that that gentleman was a candidate at the last election, and that he demanded a poll; but that in consequence of the conduct of the sheriffs, in erasing the name of the petitioner as a candidate from the poll books, a colourable majority had been obtained for the sitting members.—The petitions respectively prayed that the return might be amended, by the insertion of the names of Mr. M. J. Blake and Mr. V. Blake in the place of the sitting members, or that the election might be pronounced null and void. Second Petition.

Upon the register there appeared to be about 2100 votes. At the election, no poll was taken for the one candidate; for the others the numbers stood thus—for Lynch 1265; for Maclachlan 951; for Martin Joseph Blake 807. The poll.

Mr. Serjeant *Merewether*, in opening the case for the petitioners, stated that it involved, amongst other things, a scrutiny into certain votes claimed under the act, commonly called the Galway Act;* and that he should, with the permission of the Committee and the assent of the opposite counsel, confine himself for the present to that one point, on which, if he were successful, the case would be decided. At the late election, Mr. Lynch, and Mr. Dennis Daly, who had been succeeded by Mr. Maclachlan, were identified in interest, while Mr. Martin Joseph Blake and Mr. Valentine Blake were opposed to them. The teste of the writ was the 3rd of December, 1832, and not long before that, between the 10th of September and the 10th of November, more than 700 persons had been admitted to the freedom of the town of Galway of whom 468 had polled for Mr. Maclachlan: these votes it was

* 4 Geo. 1, c. 15.

now proposed to strike off, and if the petitioners succeeded in this, as the majority against Mr. M. J. Blake was at present only 144, that gentleman would consequently be seated. The grounds of objection to these freemen would be,—first, that they had not been admitted six calendar months previous to the election; secondly, that they had been admitted for the occasion and purpose of the election. Having made these preliminary observations, Serjeant *Merewether* proceeded as follows:—

One of the strongest objections that can be urged against a vote is occasionality; and accordingly the splitting of freeholds*—the admission of freemen for the purpose of an election†—and the acquiring a right to vote as an inhabitant householder within the period of six months before the election,‡ have been by different English statutes, all severally prohibited. The law thus established in England was transferred to Ireland by the 21 & 22 Geo. 3, c. 21: the preamble and the 8th section are both strong upon that point, and are both fully confirmed by the 35 Geo. 3, c. 29. That act was in fact almost to the same effect as the Durham Act, and though partially repealed in relation to counties of cities or towns, was re-enacted by 4 Geo. 4, c. 55, s. 32, and still continues to be law in Ireland to this day. It was therein provided, that "no person should be admitted to vote as a freeman at any election of a member to serve in parliament, whose freedom should not have come to him by birth, servitude, or marriage, unless he should have been admitted to his freedom, or his freedom should have been granted to him six calendar months at least before the teste of the writ for holding such election." Now here it is clear that these freemen had not been admitted six months previous to the teste of the writ;

* 7 & 8 W. 3, c. 25, s. 7, and 53 Geo. 3, c. 49.

† 3 Geo. 3, c. 15. The Durham Act.

‡ 26 Geo. 3, c. 100.

and unless, therefore, it can be shown that their freedom has been derived to them by birth, servitude, or marriage, the case will come completely within the statute.

A second ground of objection is, that these votes were, from the circumstances attending their creation, clearly occasional. They were created immediately after the passing of the Reform Act, when the candidates were in the field, when the number of existing votes, and the manner in which they were supposed to be influenced, was known, and were obviously manufactured for the purpose of swamping the former constituency. The Irish Reform Act passed on the 7th of August, 1832, and at that time there were only about forty resident freemen in Galway. The body had formerly been more numerous, several freemen having been admitted in 1793 and 1796; but these were subsequently objected to and rejected by a committee in 1813, as occasional, and thus the number was reduced. That committee declared the right of election to be in "freeholders of the town and county of the town of Galway, and in freemen of the corporation,"—an amendment proposed by adding after freemen, the words "having been apprenticed or admitted under the Galway Act," having been previously rejected;—and that resolution has been since confirmed by two subsequent committees.* The new freemen in this instance were, nevertheless, admitted under the Galway Act, 4 Geo. 1, c. 15, which was entitled, "An Act for the better regulating the Town of Galway, and for strengthening the Protestant Interest therein;" by the 5th section of which act it was provided, "that all persons who professed themselves of

* First Committee 18th June, 1813, 68 Journ. 579. Petitioner, Mr. Valentine Blake, who contended "that the right of voting was in the freeholders of the town and county of Galway, and in the free burgesses and freemen thereof, such freemen having been resident in the said town and county of Galway and the liberties thereof at the time of their election, and also at the time of their voting." Second Committee of Appeal, 28th of April, 1814, 69 Journ. 216. Resolution confirmed again in third committee, 19th of March, 1831.—*Minutes.*

any trade, mystery, or handicraft, that should come to inhabit, dwell, or reside in the said town of Galway, in order to follow their respective trades, should be and are thereby declared to be free of the town and corporation of Galway, and also of that company to which their respectives trades might belong, without paying any thing for their freedom." The object of that act was clearly to encourage the trade and the tradesmen of the place; but it will be seen, that in the present instance, the persons admitted were of a class very different. Advertisements were actually posted for freemen; the necessary stamps were paid for by the parties advertising; and every thing connected with their admission went to show that it was, throughout, a mere electioneering transaction.

On the 3rd of September the following placard was stuck up in Galway:—"Electors of Galway. An office is this day opened, at the office of Mr. Dominick Doyle, in Middle-street, to facilitate your registry. Apply there, and a notice will be filled up for you according to the act of parliament, and every assistance will be given to accomplish your registry. Apply immediately; the registry is at hand and not a moment is to be lost. Freemen! your notices to be admitted to your freedom are ready; apply for them without a minute's delay."

The Daly family had for some time exercised a strong influence in Galway, and at this time Mr. Dennis Daly, who was afterwards succeeded by Mr. Maclachlan, was a candidate; he was also mayor of Galway, and moreover held a commission in his Majesty's hussars: as deputy-mayor, he had appointed Mr. Edward Blake, and it was the latter who admitted these freemen. When the freemen were about to be made, this Mr. Edward Blake, and Mr. James Daly, father of the candidate, applied to the Stamp distributor for 800 stamps; the distributor sent for them to Dublin; and he was partly paid for them by a cheque on the Irish Branch Bank at Galway, which money, it will be proved, came from one

of the candidates; and, on another occasion, Mr. James Daly will be found himself to have advanced part of the sum required. Then again all the admissions were irregular; they purported, indeed, to bear date on the 18th September, which was nearly the last day for giving notice of claim before the Registration, but it will turn out that these freemen were not, in point of fact, admitted until the month of October, at which time Mr. Edward Blake, although he purported to have signed them as deputy mayor, in truth no longer held that office.* That some of the admissions did not take place till October was unquestionable, and as a proof that the practice was still going on, another notice, headed "Householders, Freeholders, and Freemen," appeared in the Connaught Journal on the 6th of that month; its contents were as follows:—"The office at Mr. Doyle's house in Middle Street will be opened at 10 o'clock on Monday, and will continue open during the sessions for the purpose of facilitating the Registry. —Galway, October 6th, 1832." Now that office was, in fact, the office of Mr. Lynch, used for managing his election, and the charge for advertising these very notices will be proved to have been paid by that gentleman: with him Mr. Maclachlan was closely connected; it will appear indeed, that they were in the same interest, and had a joint committee; they had, therefore, only to look at the names of electors already standing on the register, and having ascertained the way in which each was likely to poll, calculate how many new votes would be necessary to give a majority; then, supported as they were by the corporation authorities, nothing could be more easy than to manufacture the required number of freemen, and thus the election would be secure. Upon proof of these

* It was stated also, that the mayor and his deputy had both been irregularly appointed, and that consequently the admissions having been made by persons not duly qualified, would be, on this ground, also illegal; but no great stress was laid on this point. The transaction as to the mode of paying for the stamps would have formed, had the scrutiny failed, part of the case of bribery.

facts then, it is submitted, that on both points opened, the case will be fully substantiated.

But it will be contended that such votes as these do not fall within the prohibitory enactment of the 4 Geo. 4, c. 55, which requires freemen to have been admitted six months before the teste of the writ, or rather that they are within the exception contained in the 92nd section, in favor of those who acquire the franchise by birth, servitude, or marriage, and in support of that proposition, Mr. Hudson's Commentary will doubtless be cited. * "Freedom by service," he says, "is one of the excepted cases, and it appears that these statute franchises, founded as they are, upon the exercise of some trade, mystery, or handicraft manufacture, or art, have been considered as equivalent to title by apprenticeship, and if so, freemen by statute, being freemen by service, could have voted immediately upon their admission." This view of the law, he continues, is confirmed by the preamble to the recent act † for reducing the stamps on the admission of freemen, which states freemen, such as these, "to have been universally deemed freemen by apprenticeship." But it is submitted, that an act framed like that, solely with a view to certain regulations for the collection of the revenue, can be by no means considered an authority

* Hudson on the Elective Franchise in Ireland, p. 143.

† 2 & 3 Will. 4, c. 91, which states in the preamble that by the 56 Geo. 3, c. 56, the stamp duty, where the admission is in respect of birth, apprenticeship or marriage, is 1*l.*, and on any other ground 3*l.*, and that at all times since the enactment of the said statute, "alien and foreigner, and his majesty's subjects, who by virtue of being engaged in any trade, mystery, or handicraft are, by any charter, bye-law, usage, or statute, entitled to claim, or take up the freedom of any corporation or company in Ireland, as of right, have been universally deemed, reputed, and considered as persons claiming or taking up freedom by right of apprenticeship, and by reason thereof have been uniformly admitted to their freedom on payment of the duty of 1*l.* each," and that doubts had lately arisen as to their right to claim their freedom upon the same terms and conditions, and subject to the same duty as freemen claiming by right of apprenticeship, and that "for the better collection of the revenue, and the more liberal enjoyment of the said franchise or privilege, it is expedient that the said doubts should be removed."

upon a question of controverted franchise. The real point for consideration after all, will be this,—The 9th section of the Irish Reform Act, 2 & 3 W. 4, c. 88, contains a saving in favor of freemen actually entitled to vote at the time of the passing of that act, or who might be admitted after, by force of any statute then existing—do these voters come within that saving clause? It is clear that they were not entitled to vote at the time of the passing of the act, for they were not admitted till after; but it is said that they were admitted under a statute then existing, and that thus their right is to be substantiated. To this the answer will be, 1st, That the Galway act has never been acted on in this respect, and that after the decisions of the two former committees against the claims made under that statute, it could hardly be considered to have been still in force; 2ndly, That even if it were, yet as the 55th section of the Reform Act provides that all laws not altered by that act shall still remain in force, the prohibitory clause in 4 Geo. 4, c. 55, applies in this case, and that consequently these freemen, inasmuch as they were not admitted six months previous to the teste of the writ, are not entitled to vote.

Mr. *Harrison*, for the sitting members, protesting against such a contravention of the usual practice, according to which counsel are required to open the whole of their case at once, consented, nevertheless, for the sake of convenience, that the objection stated by Mr. Serjeant Merewether should be first taken.

The poll-books and the affidavit required in Irish cases under 4 Geo. 4, c. 11, the register for the town of Galway, and the writ of return were then put in and duly authenticated: the teste of the writ was 3d December, 1832; the indenture of return was dated 14th December, 1832.

William Grey's vote.

It was then proposed to commence the scrutiny, by going into the vote of William Grey: it having been admitted, however, that no objection had been urged against this vote at the registration—

The Committee has jurisdiction in the case of a vote unobjected to at the registration. Argument against the jurisdiction.

Mr. *Follett*, for the sitting members, submitted, that under these circumstances, the Committee had no jurisdiction. His argument was in substance as follows:—This is the strongest case of the kind which could be brought before a committee. Here, no objection was taken below; the name of William Grey stands upon the Register as an unquestionable vote, and nevertheless this Committee is called on to dismiss from their consideration altogether the process of registration, and the objects for which it was provided, and to proceed to hear all the evidence ab initio, as if no such inferior tribunal, in point of fact, had ever existed. Now this, it is submitted, is contrary to the principle which may be collected alike from the English, Scotch, and Irish Reform Acts, as they affect this question, or if there be any distinction, the arguments which may be derived from the Irish Act on this subject would appear to be still more cogent and conclusive; the principle to be derived from them all is similar, and it is desirable that the practice under all should be similar also. The English act passed first, and that provides, for the first time, for a process of registration in that portion of the United Kingdom:—the overseers are to publish the lists; persons duly qualified may object, and thus the question as to the legality of the vote is duly raised before the Barrister; and as the three questions, which by the 58th section * can alone be put at the poll, relate simply to identity of person, identity of qualification, and to the prevention of fraud in voting more than once, the Register, as authenticated by the Barrister, is the test of the right to vote at an English election. That the Barrister, nevertheless, might not exercise a jurisdiction without appeal, the 59th section allowed parties who had been excluded by his decision, to tender their votes at the poll; and the 60th section provided, that

* 2 W. 4, c. 48, s. 58. 1. Are you the same person whose name appears on the Register, &c.?—2. Have you already voted at this election for the county or town, &c.?—3. Have you the same qualification for which your name was originally inserted, &c.?

the correctness of the Register might be questioned before a committee of the House of Commons. Now, upon this it was contended in three successive cases,* during this session, that inasmuch as the act contained no words expressly taking away the jurisdiction formerly exercised by committees, of inquiring into every vote upon the poll, this last section could not by implication be held to confine their future authority to the investigation of such cases alone as had been gone into below, before the Barrister. Those committees, nevertheless, taking into consideration the machinery provided by the act, for entering fully into such questions at the time of the registration, and looking also at the additional expense which must necessarily ensue in raising, at so late a period, points which might well have been taken before, most judiciously decided that their jurisdiction was now limited, in all cases which could have been gone into at the Barrister's court, to those which were actually brought before him.

Upon the Scotch Act there has been hitherto no decision;† but it will be observed, that a very similar process of registration is provided; the Sheriff supplies the place of the Revising Barrister, and there also the principle is recognized, that his decision is conclusive whilst it remains unaltered, but that it is competent for the party aggrieved to appeal,‡ that appeal lying to three other sheriffs, who form a court of review. The inquiry at the poll is limited in the very same manner as by the English Act.§

Such then being the process observed in England and

* The *Petersfield*, see *ante*, 32; the *Bedford*, *ante*, 48; the *Oxford*, *ante*, 152.

† The decision in the *Linlithgow* had not at this time taken place. A claim heard before the sheriff, and in consequence of his decision, taken before the Court of Appeal, and again disallowed, was finally brought before that Committee, and by them declared to be good; but the question as to the jurisdiction of the Committee in such a case was not raised. See *ante*, p. 368.

‡ 2 & 3 W. 4, c. 65, ss. 23, 25. § Ibid. s. 26.

Scotland, it will be next desirable to consider what was the previous state of the law in Ireland, and what alterations have been made in it by the Irish Reform Act. In Ireland, a system of registration had already existed for some years, and nothing had been omitted to render it effective. In England, a voter could not be compelled to produce his title deeds before the returning officer, but in Ireland, with a view of preventing frauds, which had previously existed, he might be called upon to produce them at the sessions:* there a power also existed of issuing commissions to inquire into the facts upon the spot, in order to avoid the expense and trouble of bringing over witnesses;† and various other provisions were from time to time made for the better carrying into effect the principle of registration,‡ all which provisions have been embodied in 2 & 3 W. 4, c. 88, the Irish Reform Act. And first, the 13th section enacts, that "no person shall be admitted to vote at any election unless he shall have been duly registered under that act." The 14th and following sections to the 19th then provide a special session for such registration; the notice to be given to the clerk of the peace by each voter; the proceedings to be observed at such session; the mode of opposing the claims; the process of investigation, and the points to be adjudicated on by the assistant Barrister; so that before this tribunal each voter may be put to prove, if a freeholder, his title, if a freeman, his admission, and so forth, according to the nature of his franchise; moreover, the parties have the privilege of being heard by counsel: yet all this trouble and expense, according to the arguments which will be adduced on the other side, is actually to go for nothing. But this is not all; in order more effectually to ensure ample justice to the parties, by the 24th and

* 45 Geo. 3, c. 59, s. 4.

† 42 Geo. 3, c. 106, s. 4; 47 Geo. 3, c. 14; 60 Geo. 3, c. 7.

‡ 35 Geo. 3, c. 29, s. 63; 1 Geo, 4, c. 11, s. 10; 4 Geo. 4, c. 55, s. 12; 10 Geo. 4, c. 8, s. 7.

25th sections an appeal is given to a judge of assize and a jury in questions of disputed value, and to a judge of assize in all other cases; and yet, if the argument to be adduced be worth any thing, it must equally apply to every section of the act, and a committee might be called on, by their subsequent interference, to render nugatory such a solemn appeal and judgment in law as this. Next, as to the sections that more especially provide for the exercise of the right to vote.—By the 19th and 20th, if the claimant shall have been adjudged entitled to vote, he is required to verify his title by affidavit, and that affidavit, signed by the Barrister, is to be filed of record with the Clerk of the Peace; by the 28th, a certificate of registry is then to be given by that officer to each voter, which certificate, or in its absence the affidavit, is declared "to be the proper evidence of the right of the person therein named to vote;" and this, finally, is followed by the 54th, which provides, "that the certificate, or in default of its production, the original affidavit of registry, shall be conclusive of the right of voting of the person named therein; and that the returning officer, or his deputy, upon the production of such certificate or affidavit by such person, and upon his taking the oaths hereinafter mentioned, if required so to do, shall admit such person to vote without any other oath or examination, and shall indorse the initials of his name thereon, with the day and year when the same was produced; and that no inquiry whatever as to the right of voting of such person shall be permitted to be made, nor shall any scrutiny be allowed."

It will be remarked, that these last words are general, and that there is no reference in terms to the poll, save in the marginal note,* which unquestionably is no part of the enactment. Now all the former acts relating to this subject expressly referred to the time of the election alone: by the 35th Geo. 3, c. 29, "the oath shall be

* The marginal note runs thus: "certificate to be conclusive of the right of voting; and no inquiry at poll, save by affidavit in Schedule (B)."

final and conclusive evidence to the returning officer;" by the 1st Geo. 4, c. 11, s. 10, the certificate is declared to be "conclusive evidence that the person offering to poll had registered his freehold:" but in the 54th section of the Reform Act, there is no such express limitation, whereas, in the 22d section, where a limitation was intended, express words are used, declaring the certificate there spoken of to be only good "primâ facie evidence:" the inference then is, that the legislature, observing the inconvenience resulting from the former practices, purposely introduced a clause which, with a view of saving further expense and litigation, should render the register for all purposes conclusive. Where, therefore, this legal certificate and affidavit exist, it is submitted that Committees have no power to inquire by other evidence into the validity of the vote.

But in further confirmation of this position, it is worthy of observation, that although in all the sections here quoted, the act is perfectly silent as to any ulterior appeal to the House of Commons, a case, nevertheless, does occur, in which such an appeal might be rendered necessary, and that is, in the event of certain disqualifications which may have attached to the voter between the time of registry and the poll. Now it is very remarkable that this case is confined to legal incapacity, and has been specially provided for: the 59th section enacts, that "if any one being disqualified at the time of the election, shall nevertheless presume to vote," such person shall forfeit one hundred pounds to the king, and in case of a petition to the House of Commons for altering the return, or setting aside the election at which such person shall have voted, his vote shall be struck off by the committee, with such costs as to them shall seem meet, to be paid by him to the petitioner." Now if the Committee have, as it is contended, power to strike off voters generally, what necessity could there be for that special provision for this particular case? This very provision then, and the total omission of any other men-

tion of a committee, upon the principle that "expressio unius est exclusio alterius," conclusively shows, that under no other circumstances connected with a scrutiny, did the legislature contemplate an appeal to the House of Commons.

But it will be contended, doubtless, on the other side, as was the case in the arguments on the English Act, that the jurisdiction heretofore exercised by committees, founded as it was, on strong parliamentary resolutions and long practice, had, as it were, the sanction of statute law, and, consequently, could not be taken away by implication, or by any thing short of the express words of a legislative enactment. But that doctrine has been carried much too far, and has moreover been overruled by other cases, and more especially by the recent decisions in *Ex-parte Lowe* and *Ex-parte Benson*,* where it was held, after a rehearing and elaborate discussion, both before the chancellor and vice chancellor, that the creation by statute of a new court, with certain prescribed forms of practice, does, even without express negative words of extinguishment, and simply by virtue of the intention to be collected from the act, supersede and put an end to a pre-existent ancient jurisdiction. Now here a new court has been created, fully competent to decide all points which could be raised before it: the machinery is most complete; full notice, the assistance of counsel, a practised tribunal, and further, an ulterior appeal to a judge of assize, are all severally provided for: then the affidavit and certificate are declared to be conclusive; and finally, whilst the act is silent as to any committee upon subjects thus made cognizable before the court below, it is express in providing a remedy, through a committee, for cases arising subsequent to registration, and for those cases alone. The intention, therefore,

* See those cases, 1 Deacon & Chitty, pp. 3 and 338 fully stated in the *Bedford case*, ante, p. 62. The part of the argument which has reference to those cases, has been there given at length in the discussion on the English Reform Act, and that being so, it has been deemed that in this place a brief notice of it would be sufficient.

to use the words of Mr. Justice Ashurst in *Cates* v. *Knight*,* (a case in which the jurisdiction even of the Court of King's Bench was taken away,) "is apparent on the face of the act," and unless the Committee be prepared to pronounce the whole process of registration a useless ceremony, and to depart from the uniform principle already established in this very section by the English cases upon a statute, by no means more strongly worded than the present, it is submitted, that they must arrive at the conclusion that in a case like the present they have no jurisdiction.

Argument for the jurisdiction.

Mr. Serjeant *Merewether*, for the petitioners:—It has been assumed on the other side that as there is a great similarity in the subject matter and in the process provided by the three Reform Acts, a similar principle should prevail with respect to each, and that, therefore, it is desirable that there should be a uniformity of decision. But, in point of fact, the institutions of the three countries greatly differ, and the franchises and amount of qualification are dissimilar in each; the process of registration varies considerably, and under these circumstances, it may naturally be expected, that the decision of committees also should vary according to the facts of the case: in practice, moreover, that will be found to have already taken place, for, subsequently to the cases cited, namely, the *Petersfield*, the *Oxford* and the *Bedford*, a determination has been arrived at by an Irish Committee, the *Longford*,† to a perfectly contrary effect. In that instance, as here, an attempt was made to limit the power of inquiry vested in the committee; but it was there held, that the restrictive sections contained in the Irish Reform Act, to which, be it observed, the attention of the committee was especially drawn, applied in truth solely to the proceedings at the poll, and not to an ulterior investigation like the present.

* 3 T. R. 442. See also the *Bedford case*, *ante*, p. 64.

† *Ante*, p. 235. The *Longford* Committee resolved, "that they had power to inquire into all votes standing on the register."

But the jurisdiction to be exercised by the Committee, rests upon far more ancient and hitherto undisputed authority. [Here the learned Serjeant went through the cases from the *preface to Glanville* downwards, following the same line of argument as was adopted in the *Bedford* and other English committees.] *

Here then we have a tribunal established by, and exercising its powers under, an authority not exceeded by statute law, and such a power, it is submitted, nothing but the express language of an act of parliament could abrogate. But it is said, that under the English Reform Act it has been held that the jurisdiction must henceforth be limited: conceding, however, that such may be the effect of those cases, the answer to that argument is, that the English Act does contain certain express words which might possibly justify those decisions, but that in the Irish Act, on the contrary, no such language occurs at all. The 60th section of the English Act does in terms declare under what circumstances a petition, involving the validity of registered votes, may be brought before the House, and the mode, moreover, in which those votes may be impeached, "by proving," namely, "that, in consequence of the decision of the barrister, the name of any person, who tendered his vote at the election, was improperly admitted on or omitted from such register." This provision, it was argued, operated as an express limitation upon the former jurisdiction, and it was on that ground that the committees before mentioned decided that in such cases they had authority to interfere. Again, as to the Scotch Act, the proceedings in Scotland are founded upon former statutes, long before in operation in that country, and essentially differing from the provisions of the Irish Act. Then, as to the process in Ireland itself,

* See the cases given at length in Mr. Harrison's argument in support of the jurisdiction, *Bedford case, ante*, p. 49.

the review provided under such circumstances by the English Act?—the review of a committee; and, if indeed, the principle of that act is to be brought to bear upon the law in Ireland at all, this must clearly be a case for the consideration of a committee also.

But it is urged that the certificate and affidavit are, by the words of the act, to be taken as conclusive: and undoubtedly they are so to be taken, but then it is at the election, and at the election alone. The 28th section of the act, after stating that the certificate or affidavit shall be the only proper evidence, goes on to provide that they shall be "produced to the returning officer;" and the 54th section, which has been pressed upon the Committee as still more decisive, after declaring that this same certificate shall be conclusive of the right of voters, not only directs, like the 28th, that it shall be produced to the returning officer, but whilst it provides also that there shall be "no scrutiny or enquiry," further adds, "save only that the sheriff, or other officer, shall, if required, administer certain oaths," and provided also that "if such person so tendering his vote shall appear by such certificate to have before voted at such election, or shall refuse to take the said oaths, the sheriff or returning officer, or his deputy, shall reject such vote;"—from all which it is abundantly clear, that the operation of both those sections is entirely restricted to the time of polling, and does not in any respect limit the jurisdiction of this House.

It is true, that the only section which mentions a committee eo nomine is the 59th, and it has been argued indeed that the right of petition is there confined to cases of disqualification, that is, of legal incapacity incurred between the time of registration and the poll: but the language of that section * evidently applies to

* The words are, "any person at the time of any election being in the enjoyment of any office disqualifying him from voting at such election, or being otherwise disqualified, or having ceased to be qualified." 2 & 3 W. 4, c. 88, s. 59.

the question is put thus: Is all this machinery provided by the Reform Act, the notice, the court, the facilities of examination and of appeal, all to be thrown away, and the whole matter opened de novo? The answer is, that all this course of proceeding was in full operation in Ireland before the passing of the Reform Act, and that committees of this House, nevertheless, were not only in the constant practice of exercising a full and summary jurisdiction, but that that jurisdiction was never disputed. Much stress also has been laid upon the decision in *Ex-parte Lowe* and *Ex-parte Benson*, but those cases are in principle as well as in fact, very distinguishable from the present. There the point for consideration was, whether the Chancellor's jurisdiction in bankruptcy was or was not superseded by the establishment of the new court; whether, in point of fact, the same suitors might proceed in two courts or in one? but here it must be observed, that the parties who appear before the revising barrister, and those who claim to come before a committee, are by no means necessarily the same. After the election, the unsuccessful candidate claims to be heard as a third party, and unless his case be entertained by a Committee, he has no remedy whatever.

As the principal argument, however, on the other side has been founded upon the Irish Reform Act, it will be desirable to consider it more in detail: and, first, since so much importance is attached to the appeal to a judge of assize there given, it is worthy of remark, that that appeal is only where the barrister may have rejected a vote; there is no such remedy available in cases where a vote may have been improperly admitted.* Unless, therefore, it is to be contended that his decision upon such a point as this is not to be subject to review at all, here is at once an instance in which the interference of some ulterior tribunal would be indispensable: what then is

* See 2 & 3 W. 4, c. 88, s. 24, 25.

the review provided under such circumstances by the English Act?—the review of a committee; and, if indeed, the principle of that act is to be brought to bear upon the law in Ireland at all, this must clearly be a case for the consideration of a committee also.

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many cases,—first, to an incapacity by office, next to any other incapacity, and, lastly, to any other mode, whether by sale of property or otherwise, in which a party may have "ceased to be qualified:" the words, moreover, which more immediately refer to a committee, simply say, "in case of a petition to the House of Commons," and in this it is contended that there is not only nothing to show that it was purposed to restrict the appeal to any particular case, but, on the contrary, that it is in itself a strong proof of an intention to leave the law as to the cause, time, and manner of petitioning just where it was before.

Then another apparently very plausible point has been made, on the ground that no objection was taken to this vote at the time of registration; but in point of fact, the objection could not then have been taken, because it had not, and could not, at that time have arisen. The 32nd section of the 4 Geo. 4, c. 55, on which the case against this vote depends, has no reference whatever to the registration, but provides that "no one shall be permitted to vote as a freeman," with an exception in favour of freemen by birth, servitude, or marriage, "unless he shall have been elected or admitted to his freedom, or his freedom shall have been granted to him six calendar months at the least before the teste of the writ for holding such election:" until the writ was issued, therefore, the objection could not have arisen, and as no provision has been made by the legislature, by which a voter, under such circumstances as these, could be stopped at the poll, this is the first and only tribunal to which application for relief could have been made. That cases for the interference of the House may well arise after registration, was fully established in the *Bedford Committee*;* there a voter, who had been duly registered, but who had afterwards been engaged and paid as a check clerk at the election by one of the candidates, in

* The case of William Wilcox, *ante*, p. 94.

the course of that election polled, but not for the candidate by whom he had been employed; an objection, however, was taken that the employment he had filled disqualified him from voting at all, and the vote was in consequence struck off. There, as here, there was nothing to prevent his due registration, but it by no means followed that something might not occur, after that, which would vitiate the vote. For all these reasons, therefore, and more especially on the ground that any objection which may have been called into existence since the time of registration is fully cognizable by this House, it is submitted that the Committee will follow up the principle established in the *Longford case*, and proceed with this scrutiny.

Mr. *Follett*, in reply:—The three Reform Acts do not so essentially differ as has been stated, and if there be any variance at all, it consists in this, that the Irish Act is more elaborate than the English in the process provided for the registration: It is a matter worthy of consideration also, whether or not it be desirable that witnesses should be brought over from Ireland at such an enormous expense, and that all the votes on the register should be thus fought over again; for if the general jurisdiction of the Committee be established, there is nothing to prevent an investigation into the rights of the whole of the two thousand voters in Galway. But it is said that the 60th section of the English Act does give a power to inquire into certain cases, and thus limits the inquiry to those cases only. In answer to that, it is submitted that the Irish Act also, by the 59th section, contemplates a petition under certain circumstances only, and consequently that the same principle of limitation ought to prevail here likewise. What those circumstances are, is clear from the wording of the section which refers to "parties disqualified or ceasing to be qualified" —terms which, in parliamentary language, apply only to disqualification by office, perjury, lunacy, or any other legal incapacity; under such circumstances alone would

an appeal lie to a committee. Then as to the hardship said to be imposed on the candidate in not allowing him to be heard, he has, first, his opportunity of watching the registration, and if he only offer himself subsequently to that period, he has in the register itself a safe index on which to found his calculations; so that he acts at his own peril. The reasonable construction then upon the act will be, that where an inferior court was with so much care provided, and an appeal to a judge of assize given, no further appeal could have been contemplated, save in the instances pointed out by the statute, and that as this case is clearly not within the exception, no further enquiry should be gone into upon this vote.

The Committee resolved, that the counsel for the petitioners be allowed to go into their case on the vote of William Grey.

Evidence on the vote.

The following facts were then put in evidence:— Mr. William Reddington, a distributor of stamps in Galway, proved, that on the 11th or 12th of September, Mr. Daly, Sen., and Mr. Edmund Blake, the deputy mayor, called and requested him to provide himself with a further supply of stamps, which he accordingly did, to the number in all of one thousand; that they were 1*l.* stamps for the admission of freemen, and that they reached him on the 14th of September; that about the 9th of October, he first furnished a supply of these stamps to Mr. O'Hara, the town clerk, and that subsequently, but before the 17th of October, four hundred and thirty-two had been supplied to that gentleman or his deputy, Mr. John Michael O'Hara; that none were furnished to any other person, and that, up to the last day of registration, the number from time to time advanced, was in all seven hundred and seventy-oue: that the money for these stamps was paid him as follows: 432*l.* on the 18th of October, by a check from Mr. John Michael O'Hara, on the branch bank of Ireland; from the same person 135*l.*, in the

week ending on the 1st of November; 50*l.* in the week ending on the 8th of November; 100*l.* in the week ending the 15th of November, of which 50*l.* was from Mr. J. M. O'Hara, and 50*l.* from Mr. Edmund Blake; finally, the balance 54*l.* was made up by J. M. O'Hara, some time after, by a check for 50*l.*, drawn by Mr. Daly, on James Smith, of Loughrea, his land agent, and by an allowance of 4*l.* to the deputy town clerk as commission.

This witness further stated, that there was an agreement on this occasion between him and Mr. O'Hara, the town clerk, that as many stamps as were wanted should be supplied to his deputy, and that he, the town clerk, would pay for them; that no such agreement had before existed, but that persons about to be admitted had generally paid for them themselves: that, at the last election previous to this, not more than thirty-six had been supplied, and none in the intermediate time up to October: that the amount of the duty at former election had been 3*l.* on the admission of non-resident and 1*l.* on the admission of resident freemen; but that at the present it had been only 1*l.* for each indiscriminately—whereas, heretofore, all, whether Catholic or Protestant, who had been admitted by "*grace especial,*" paid 3*l.* each for their stamps. He added, that he knew Mr. Dominick Doyle's house, and that he had seen exhibited at the window a placard, stating that there was an office there for the registering of freemen; that he knew William Grey of Church-lane (the voter) to have been a soldier, and that he received a pension on that account, and that he was now a pedlar; that he did not know him to be a weaver, but that he was a Protestant.

Mr. O'Flaherty, the proprietor of the Connaught Journal, then proved that the placard of the 3rd of September, and the notice of the 6th of October, before-mentioned, had been inserted in that paper as advertisements; that an address also, by Mr. Lynch,

[illegible] the 24th of December, and a notice, dated the 17th of December, against "Town of Galway Election," containing the names of the joint committee of the sitting members, and some time after inserted in the same notice, and that Mr. Lynch paid the whole expense of the publication of the first three, and half the expense of the last.

It was next admitted that the registration commenced on the 16th of October, and terminated on the 16th of November, that the mode of the writ was the 3rd of December, and that the poll commenced on the 16th and closed on the 20th of December.

Mr. James Macnamara O'Hara, the deputy town clerk, then stated, that he had paid for the seven hundred and seventy-one stamps, by checks from time to time on the bankers' book of Lynch, by directions of Mr. O'Hara, the town clerk, but by whom, or on whose account that money had been there deposited he knew not, with the exception of about £30, which he himself had received from individual applicants for their freedom, and paid in to the general account:—that a list of persons, who were about to claim admission as freemen, was brought to him at his office at Kilroy's, and that that list was brought by Mr. Jeffrey Morris, and, as he believed, from Mr. Dominick Doyle's; that the notices of claim were also sent in alphabetically arranged, and that entries were made in the corporation admission book, some from the list and some from the notices; that several of these entries were in the handwriting of Mr. Jeffrey Morris, who was not a member of the corporation, but who had taken an active part at the registration and in the election, as a supporter of the sitting members; that these claims were brought forward at a meeting of the common council at Kilroy's, in the month of September; that the mayor read aloud the name of each individual from the admission book, and that the sense of the council was taken upon it, and amongst others upon the claim of William Grey, and that he was admitted;

that about six were rejected, and amongst them a man called Purdon; that he was rejected because, although he was a merchant's clerk, he was not an artisan or a tradesman; that a blind man, a pensioner, called Stanton, who kept a confectioner's shop, was, on the contrary, admitted; that the last day for sending in notices of claim was the 19th, and that the last day on which any persons were actually sworn in as freemen was the 18th of September; that all the stamped admissions bore date of the 18th of September, but that, in point of fact, many were not filled up by Mr. Blake, the deputy mayor, until after the commencement of the registration on the 1st of October; that the revising barrister examined all the stamps, but that he was not informed that they had been filled up after the day on which they purported to have been dated; and that at that time Mr. M. Blake, Mr. Daly, and Mr. Lynch, were the candidates.

The corporation books were then put in, and from them, as well as from the further statements of the last witness, it appeared that Mr. Dennis Saint George Daly was elected a free burgess, common councilman, and mayor, on the 1st of August, 1831, and that on the same day he was admitted a freeman, the entry stating that he had been elected to that office on the 14th of June previous, although of such election no minute appeared in the corporation books; that he had no residence in Galway, that his family residence was sixteen or seventeen miles from that town, but that he had been chiefly of late with his regiment, wherever it happened to be quartered; that he was sworn in mayor on the 29th of September, 1831, and that he immediately appointed as his deputy Mr. Edmund Blake, who was also sworn in on the same day, but that no entry of this either appeared in the corporation books; that Mr. D. Daly ceased to be mayor on the 29th of September, in the year following, and that Mr. Edmund Blake succeeded him in the office, and that conse-

quently, his character of deputy mayor, in which he purported to have filled up the stamped admissions when he signed them afterwards in October, in point of fact, ceased on that day.

The books of a public corporate bank (the bank of Ireland), may be called for and produced in evidence to prove an account existing between it and the member petitioned against, although their production be objected to by the bank and the member.

Mr. O'Hara, manager of the branch bank of Ireland, in the town of Galway, then stated that Mr. Lynch kept an account with that bank, but that Mr. Maclachlan did not. The witness being then called on to produce Mr. Lynch's account from September to November objected, on the part of the bank, so to produce it, especially if Mr. Lynch himself had any objection.

Mr. *Campbell*, as counsel for the sitting members, objected, on the part of Mr. Lynch, to its production; in support of the objection contending that a distinction should be taken between those cases where the accounts of a private bank had been produced and the present, where it was not a mere pass-book that was called for, but where it was proposed to make public the accounts of a great corporate body, like the bank of Ireland.

Mr. Serjeant *Merewether*, contrà, contended that the principle that a banker's books should be produced before a committee, had been fully established and acted on in the *Norwich case*,* and that, as the bank of Ireland must, in respect of a private account kept with it, like this, be entitled to no greater consideration than any other banking establishment, there could be no valid objection to the production of the books.†

The Committee resolved, that the books be produced, but for the purpose only of putting in evidence the account of Mr. Lynch.

The account of Mr. A. H. Lynch was then referred to, and was found not to have been opened until the

* 3 Luders, 448.

† But see the *Pontefract case*, Minutes, 1827, where a question was put, touching the time when the sitting member had opened an account with the Leeds bank, and overruled. See also the 1st *Southwark case*, Clifford, 105; the *Cricklade case*, Petrie, 82; the *Evesham case*, Minutes, 1830; and the *Oxford case*, *ante*, 140.

14th of November, 1832. There was no entry of a sum of 432*l.* paid to the check of John Michael O'Hara on the 18th of October; but the last witness, Mr. O'Hara, produced a check dated October 3rd, 1832, in this form, "Pay the mayor's balance to the town clerk.—495*l.* 10*s.*—John O'Hara." This check he stated had been paid, and placed to the account standing with reference to stamps, which account, he added, had been opened by the mayor of Galway just previous to the registration. Mr. Serjeant *Merewether* then directed him to refer to the mayor's account.

Inspection of the accounts of other parties not permitted.

Mr. *Austin* objected that the recent resolution of the Committee precluded the counsel for the petitioner from going into any other account in the books, save that of Mr. Lynch.

Mr. Serjeant *Merewether* contended, that having established from the witness the fact that there was an account opened for the stamps, which was such an important feature in the present inquiry, he was justified in going further, in order to show who supplied the money with which these stamps were purchased. The object was to show the votes of these freemen to have been manufactured for the occasion, and nothing could tend more materially to confirm it than to prove that the very admissions were paid for by others than the voters themselves. Whether the money was directly advanced by the mayor or the candidate would be immaterial, provided it appeared that it was not bonâ fide supplied by the voters. It had been said that John Michael O'Hara had no account himself with the bank; when, therefore, he was nevertheless found drawing checks on it, which were duly honoured, the Committee would insist on ascertaining from what fund those payments were made. No precedent had been suggested for checking such inquiry, the simple question, therefore, to be put was, "whence came the money which was paid over to Reddington?"

The Committee resolved, that the counsel for the

petitioners be not allowed to inspect the accounts of John O'Hara, John Michael O'Hara, or Edmund Blake.

The admission of William Grey was then put in and read, as follows:—"Be it remembered, that William Grey, of Mainguard-street, weaver, of the town of Galway, being entitled as of right to his freedom as a weaver, under and by virtue of the act of the 4 Geo. 1, c. 15, and of the 1 & 2 Will. 4, c. 49, and having before the mayor of Galway taken the usual oath as a freeman, and having subscribed the oath under the 10Geo. 4, c. 7, is this day entered in the books of this corporation as a freeman and admitted accordingly. Dated this 18th day of September, 1832.

(Signed) EDMUND BLAKE, Deputy Mayor."

It was then further proved by a witness who had known the voter fourteen years, that William Grey was a hawker, and had kept a hardware stall in the street, but that he had never, to the witnesses knowledge, professed himself to be a weaver or carried on that business.

Adjournment. Permission from the House to proceed in the absence of a member of the Committee confined by sickness.

A member of the Committee, Colonel Davies, having been incapacitated by illness from attending on Friday, the 27th, the Committee adjourned till Monday the 30th, when, upon a statement that he was still confined from the same cause, permission was asked and obtained fom the House to proceed in his absence.

Tuesday, April 31st.

Mr. *Rogers*, for the petitioners, was heard in opposition to the vote of William Grey.

Argument against the vote of Wm. Grey.

The first objection to this vote is, that it is bad on the ground of occasionality. Now an occasional voter, according to the authorities, is "one whose qualification, whether from estate, office, or other cause, was conferred or taken for the purpose of voting for a particular candidate, or in a particular interest," and that definition is substantially correct, though it is to cases of personal qualification more especially, that the jealous

watchfulness of the legislature has been from time to time more immediately directed. The first statutory provision on the subject is that made by 11 G. 1, c. 18, an act passed for regulating elections in the city of London, and an oath is there required from the party declaring that he has been a freeman or liveryman twelve calendar months previous to the election: a similar oath is required by 3 G. 2, c. 8, from persons claiming to vote as freemen at elections for the city of Norwich, and the 18 G. 2, c. 18, and 19 G. 2, c. 28, require, upon the same principle, a twelve month's clear possession in freeholders claiming to vote for counties or cities of counties. The case of freemen, however, was still the most pressing evil, and, accordingly, the opportunity offered by the gross circumstances attendant on the Durham election, in 1762, was seized on, and the Durham Act consequently passed, which applied to all freemen generally, and excluded them expressly from voting in all cases where they had not been admitted twelve calendar months before the election. These then, are the statutes declaratory of the law on this subject in England; declaratory, because it must be remembered that an occasional vote was clearly bad at common law;* in the *Durham case* itself, before the passing of the act, the committee of privileges struck off 215 votes† as bad upon this ground; the statute, therefore, did no more than point and enforce the antient law of parliament, the effect being, that those votes, which before were only impeachable and in the discretion of the Committee, are now absolutely void.

Now in Ireland, before the passing of the Reform Act, the 35 G. 3, c. 29, re-enacted by 4 G. 4, c. 55, s. 32, having the same object in view, namely, to prevent occasionality in the case of freemen, required that they should have been admitted six months previous to the election at which they claimed to vote, with an exception

* *Onslow* v. *Rapley*, Lord Somers' Tracts, 279; 1 Peck, 350, note.

† 1 Douglas, 238, note a.

in favour of birth, servitude, or marriage, similar to that in the Durham Act: and, on the late amendment of the representation, the same principle was still more fully carried out with regard to every other class of voters. The 5th, 7th, and 13th sections of the Irish act are express on this point, specifying in terms every other class save freemen, who were omitted, without doubt, simply because the above-mentioned act had already fully provided for their case. Unless, therefore, it can be contended that this omission was intentional, and that the legislature, contrary to the policy of the antient state of the law and the general principles of the English,* as well as the Irish Reform Act, meant to make a special exemption in favour of freemen in Ireland, the case against these voters will be free from difficulty: had there, indeed, been any express exception in words, such an enactment might have been held to overrule every other consideration; but, in the absence of any such provision, the same principle (confirmed as it has been by subsequent statutes) which operated to the exclusion of two hundred and fifteen freemen in the *Durham case*, must still more strongly apply to the seven hundred and seventy-one, who in the present afford such a remarkable instance of wholesale manufacture.

To the vote of William Grey, then, there will be two objections—1st, that having been admitted as freeman within six months only before the registration, he was not entitled to be registered; 2ndly, that even if he were registered, still, that as his case did not fall within the exception in 4 G. 4, c. 55, in favour of persons acquiring their freedom by servitude, that period of admission was, at any rate, not sufficiently long to entitle him to vote at the last election.

First, as to the registration:—The 9th section of the Irish act provides, that "all persons, who by reason of marriage, birth, or service, or of any statute now in

* 2 W. 4, c. 45, s. 32.

force, shall be at any time hereafter admitted to their freedom, shall, after such registration as is directed by this act, but so long only as they shall reside within the city, town, or borough in question, or within certain statute miles of the place of election therein, have and enjoy such right of voting as fully and in like manner as if this act had not passed." By this provision then the legislature evidently concedes to the parties the antient right as exercised under 4 G. 4, c. 55, s. 32, imposing, nevertheless, certain other requisites, namely, registration and residence: with these exceptions, the antient right and the mode of its enjoyment remain just as before. The question, therefore, will be, could William Grey, under the circumstances of his case, comply with that condition of registration? The 15th section of the Irish act requires, "that every person intending to apply to be registered, should give a notice to the clerk of the peace, and that in that notice he should state the right in respect of which he intends to apply, and the nature of the qualification relied upon by him, as entitling him so to be registered." Now the only qualification which the present voter pretended to was that of a freeman, and the only manner in which that could have been correctly set out would have been as a freeman resident for six months, which period he had clearly not fulfilled. Again, by the 19th section, a party declared by the revising barrister entitled to be registered, is subsequently required to verify his title by affidavit, and to take and subscribe the oath set out in schedule C. Could Grey then conscientiously have taken that oath? In a freemen's case it would run thus, "I, *A. B.*, &c., do swear that I am a freeman of this city, &c., and that I for the last six months have been a resident within the said city," which implies, it is confidently submitted, "a resident freeman." It may be contended, indeed, that residence previous to the admission would satisfy this provision; but not only is the form in the schedule

manner" such as he might be resident freemen," but by the 9th section, the right is reserved to freemen "so long only as they shall reside:" the freedom, therefore, and the residence, it would seem, must be united in the same person in order to perfect the franchise; the residence without the freedom would be as useless as the freedom without the residence: unless, therefore, it can be contended, that a man who is admitted on the last day of a six months' residence can claim that his admission should be considered to relate back to the first day of that residence, and thus make him a freeman of six months' standing, which is a proposition hardly tenable. It is clear that an admission previous to residence is not what was contemplated by the statute, and, consequently that William Grey having been so admitted, was improperly registered.

Secondly, Conceding, for the sake of argument, that he had been properly registered, still he was not entitled to vote as a freeman at the last election. Here again the 9th section of the Irish Reform Act is the saving clause, under which alone he could claim to vote as a freeman at all, and it is there, as has been before observed, expressly provided, that that franchise is, with the exceptions there introduced, to be exercised "in the same manner as before the passing of that act." This then consequently refers the voter to the previously existing law, and that law will be found set forth in the 4 G. 4, c. 55, s. 22, which enacts, "that no person shall be admitted to vote as a freeman, whose freedom shall not have come to him by birth, servitude, or marriage, unless he shall have been elected and admitted to his freedom, or his freedom shall have been granted to him six calendar months at least before the teste of the writ for holding such election." Under this section, therefore, it is clear that his vote would have been inadmissible. But it will be, perhaps, contended, that the 29th section of the Reform Act has removed the difficulty: it is there provided, "that every person who shall

duly register as a voter within that act, at the first session for registering his vote within that act, shall be thereupon forthwith entitled to vote:" but these words, it will be seen, apply only to voters "within that act," that is, to such as claim a vote created by that act, not to such, as in the present case, are remitted to an antient right existing previous altogether to the passing of the act: by the 9th section the freeman, subject to the exceptions, is still to enjoy his former right "as fully and in like manner as if the act had not passed," and that manner is, consequently, not affected by this subsequent provision in favour of the newly created voters.

There yet remains, however, the principal point which will probably be made in favour of this vote, and that will arise upon the exception in the 4 G. 4, c. 55, s. 32, in favour of those who acquire their freedom by "birth, servitude, or marriage," and it will be contended on the other side, that the right of admission under the Galway Act is equivalent to a right acquired by servitude, and, consequently, that the case of William Grey falls within the above exception. In support of this proposition, the preamble to the Stamp Act,* and the commentary on it by Mr. Hudson,† will doubtless be cited to show that there is some sort of authority for considering the two rights to be on the same footing: but that preamble applies solely to matters of fiscal regulation, and there is the far higher authority of Sir W. Grant for saying "that the revenue laws ought never to be held to operate beyond their immediate purpose so as to affect the property or vary the rights of others."‡ Should the committee, however, be of opinion, that the Galway Act does confer a species of inchoate right, still if that right do not occur distinctly expressed in the terms of the exception in the act, the proposition cannot be supported. This

* 2 & 3 W. 4, c. 91.

† Hudson on the Elective Franchise in Ireland, p. 143.

‡ *Buckmaster* v. *Harrop*, 7 Vesey, 345.

s[illegible] in the case of *Williams* v. *Lewis*,* there [illegible] on the 5th of October 1789, a burgess of the borough of Carmarthen, under a provision in its charter, as having been an inhabitant, paying scot and lot within the borough, and having resided a twelvemonth next before at 30*l.* per annum or more, was returned to the commissioners: he had not been sworn and enrolled until the 15th of February, 1790. Nevertheless, having voted at an election of a member of parliament on the 27th of May in that year, he was sued for the penalty of 100*l.* imposed by the Instruction act. It was contended in that case for the defendant, that the order for his admission had given him an inchoate right, and that nothing remained incomplete but the form of the administration of the oath; but Lord Kenyon in his judgment observes, "It is true, that the defendant had an inchoate right before, but it must be remembered that he had no right whatever until the corporation chose to confer it on him by what is called an order admission, and that was not consummated until the swearing in. But this inchoate right cannot assist the defendant: the rule 'expressio unius est exclusio alterius' applies to this case, for the only excepted cases of inchoate rights are those by birth, marriage, or servitude: every part of the act shews that the legislature thought that the material time to be considered was the time of admission." Again, Mr. J. Lawrence says, "Even supposing the defendant had an inchoate right by the order for his admission, he could not vote at the election without incurring the penalties of the act: for the instances of the exceptions in the proviso are of persons having an inchoate right. This is not one of them: and we cannot extend the exception to other cases that are not there mentioned." The rule of construction then is clear, namely, that if a person rest upon an exception, he must bring himself within the

* 8 T. R. 246.

words of it. Any attempt, therefore, in the present instance to urge that, although not admitted specifically in respect of servitude, the voter was admitted by a right equivalent to it, will be fully met by the strong language of the above judgments. The legislature has not thought fit to extend the exceptions to other inchoate rights than those specified; there is, therefore, no ground for contending that other persons should be brought within it. *Symmers* v. *Regem* is also another authority in point:* that was a case in which a writ of error was brought to reverse a judgment of the Court of King's Bench in Ireland on quo warranto against several persons (amongst whom were Marshall and Grubb, two men admitted under the Galway Act), to show by what authority they claimed to exercise the privileges and franchises of freemen, free burgesses, and common-councilmen of the town and borough of Galway; the decision turned chiefly on two points, but the first and the most important was, whether the defendants, Marshall and Grubb, were not entitled to judgment, their title under the Galway Act not being denied; and these are the words in which Lord Mansfield deals with that proposition, "It may happen, that persons might apply at one time under the act of parliament when they had no title, and at the end of six months after they might have a very good one. If it should be so with respect to these two defendants, the question is still open. As to the office of freeman, there are two modes of acquiring that right, the one according to the constitution of the borough, by the election of the mayor, common-council, and freemen in general assembly, agreeable to the rules of the borough and its charter; the other by special act of parliament, which consists and is complicated of many facts. This latter gives a *right* only, not a *title*, because the qualification of the claimants must be judged of.

* Cowper, 505.

[redacted] apprentice to [redacted] freemen of certain trades men-[redacted] residing within the borough for a year pre-[redacted] professions practised for seven years, and then [redacted] to apply for their freedom. The act, therefore, gives [redacted] a qualification. The mode of obtaining their [redacted] is by application to the mayor upon the facts [redacted] mentioned; the mayor, therefore, ex officio, is [redacted] to judge whether they are qualified within the act or [redacted]. If they are, he must admit them; if they are not, he [redacted] reject them; and if he swears any one in without a qualification, such person may be ousted by an information." A distinction is here taken between a right and a *title*: a right is that which, if the claimant can bring forward evidence to support it, enables him to claim admission, that admission being still in the discretion of the authorities to whom the claim is presented: a title is a complete thing in itself, and in such a case there is no discretion with the authorities, but they must admit.

Now, to apply the above propositions: in the present case it is clear that Grey had no *title* to be admitted. The utmost claim by any of these persons under the Statute Act was a species of right to have their qualification considered, and that is evidenced by the manner in which the common council dealt with the claims; the merchants' clerk they rejected, others they admitted at their discretion. But even that right, such as it was, falls far short of an inchoate right, according to the doctrine laid down in *Williams* v. *Evans*: Lord Kenyon there expressly says, "that the defendant had no right whatever, until the corporation chose to confer on him as ex gratia admission;" and yet in that case he was apparently in full possession of the necessary qualifications long before: so here, supposing Grey to have been in all respects duly qualified, still, on the above principle, until admitted, he had not even an inchoate right to vote. Further, supposing that he had some sort of inchoate right, still that will not avail him, unless he can

show that such a right is expressly excepted by the words of the act: the only excepted cases here, as in *Williams* v. *Evans*, are "birth, servitude, and marriage," and, as he does not pretend to claim in respect of either of these, the argument from that case is unanswerable. To put the matter beyond doubt, however, on reference to the 9th section before cited, the words "birth, servitude, or marriage," are followed by "or of any statute now in force;" showing clearly, that the legislature did contemplate cases of admission upon the then existing statutes, as the Galway Act, and that those cases were to be distinct from and not identified with those immediately preceding.

Then as to the question of occasionality at common law, it will be material to re-consider the facts which accompanied the admission of these freemen. In the first place, on the 11th or 12th of September, Mr. Daly, sen., and Mr. Edmund Blake, go to the distributor, and request him to procure a large number of stamps for the purpose of preparing these admissions. Now Mr. Daly throughout appears to be most anxious to strengthen his family influence in the town of Galway, and at that very time we find that he had a son, at once a cornet of hussars, mayor of the town, and candidate to represent it in parliament; this very same gentleman having, moreover, been sworn in freeman and elected burgess, common councilman, and mayor, all in the same day. The stamps then having been sent for in this manner, the next question will be, who paid for them? The evidence of the deputy town clerk shews, that out of the seven hundred and seventy-one freemen, only seventy-six advanced the money themselves: the deputy himself had no account with the bank, yet his checks appear to have been always duly honoured: the inference is, that there was a fund deposited with that establishment for this express purpose, and yet when an attempt was made on the part of the petitioners,

with the sole view of proving occasionality, to ascertain from the books, who had supplied that fund, and to expose the real nature of the transaction, the inquiry was stopped by the Committee. Three of the checks, nevertheless, were proved to have been paid by Mr. Daly, sen., and when this fact is coupled with the first application of that gentleman for the stamps, and the circumstance that his son was then a candidate, who only after all withdrew at the eleventh hour, the inference is clear, that these freemen were made at the instance and to further the views of this family. If it be not so, how does it happen that not one of these individuals is shown to have come and applied personally for his freedom? The book containing the names of the claimants has been put in, and those entries have been shown to have been made from a list traced to the office of Mr. Dominick Doyle, whose connection with the sitting member, Mr. Lynch, and with Mr. Maclachlan, has been established beyond question, from the fact that the advertisements in the Connaught journal were paid for by the former, and that one of those advertisements contained a list of the joint committee acting for himself and for the latter of those two candidates: again, the entries were made by Mr. Jeffrey Morris, who seems not only not to have been a freeman or burgess, or in the exercise of any corporate office, which might authorize him so to interfere, but who, on the contrary, was known as the accredited objector, and active committee man of the sitting members. As William Grey, therefore, appears never to have applied to have his name inserted, or to have purchased the stamp, or to have been in any way concerned in procuring his freedom, it is obvious that there was some other party actively at work, and instrumental in causing him to be admitted; and as that influence was exerted obviously for the purpose of manufacturing a vote, to be applied subseqnently to the

purposes of that party; it is submitted, that no stronger case of fraudulent occasionality could have been made out.

Then again, every other part of this transaction appears to be tainted with fraudulent contrivance. Where is there any evidence of the time at which this voter was admitted? The entries in the corporation book bear no date of any sort. But it will be said, that the stamped admissions prove that the freemen were admitted on the 18th of September: this, however, is obviously a fallacy, for the evidence of the deputy town clerk goes to prove that no stamps were issued till the 3rd of October, and that the same were supplied from time to time until the 29th of that month, making it obvious, that the admissions took place, in point of fact, at different times, but all after the day pretended. Yet it is of the essence of the admission that the actual date should be known, since it is from that date that the residence required by 4 Geo. 4, is to be calculated: a very inconsiderable variance, therefore, in a case of doubtful residence might serve fraudulently to establish a vote. Mr. Edmund Blake, moreover, purports to have signed these admissions on the 18th of September, as deputy mayor: now there is no evidence, no entry of any kind to show that he ever was legally appointed to that office, and if even he had been, still it is obvious that at the real time of signature, which must have been after the stamps were first procured on the 3rd of October, that appointment must have merged in the superior office of mayor, to which he was elected on the 29th of September.

It only now remains to remark on the character and occupation of William Grey. If he had been really a Protestant and a weaver, he might have claimed his freedom at any time within the preceding fourteen years, during which he had resided in Galway. By the Galway Act it is necessary that the claimant should profess a trade, and come to reside in that town for the purpose of

[illegible] :—The words of the act are clear, "And that all persons who follow themselves of any trade, [illegible] or manufacture, but so as shall come to reside in the said town of Taunton, in order to follow their respective trades, shall not be thereby declared to be free of the said town and corporation, and also of that company or corporation in which their respective trades belong, without paying anything for such freedom, and shall continue members of such company or corporation as long as they reside in the said town, and no longer." There are also further provisions for their being Protestants, [illegible] or seven years before claiming their freedom. Now in the terms of the act, What does Mr. William Grey "profess and come to follow" in the town of Taunton? It is said, that of a weaver; but in point of fact there is no evidence that he had any occupation but that of a packer: he, therefore, appears on his own showing not to have no legal claim to his admission. But the main argument still will be, that this case is not of necessity: upon the general policy of the law in preventing such fraudulent practices there can be no question: unless, therefore, the counsel for the sitting members can succeed in convincing the Committee that this case is expressly within the exception in the act, and that all the imputation of contrivance attaching to the whole transaction is without foundation, I am confidently submitted, that William Grey's vote must be struck off the poll.

Argument in support of the vote.

Mr. [illegible], for the sitting members:—This case is one which might have been disposed of very shortly, for the real question is not as to what may be the law touching non-resident votes, because on that point there can be no doubt, but whether this case does or does not fall within the exception in the act of parliament: that it does fall within that exception will, it is apprehended, be clearly established: and if so, the doctrine as to occasionality does not apply. All experience shows that persons claiming in this manner, that is to say, in respect

of "birth, servitude, or marriage," have been in the habit heretofore, before the passing of the Reform Act, of coming to be admitted, even after the election was actually commenced, and that, further, they have been invariably held to be entitled to be admitted at once, and have proceeded from the court of admission forthwith to the poll. Upon one occasion at Colchester, where a considerable time had elapsed without a contest for the representation, two hundred were admitted during the first two days of the election. Again, in the *Worcester case*,* four hundred persons were admitted, for nearly one half of whom the admission fees had been paid by Griffiths, the agent of Colonel Davies, and, in two instances especially, the payment had been made even in the committee room of that candidate. The case then of the voter named Probert, as there reported, is directly in point, and upon that authority it is clear,—first, that even if it had been proved that these admissions had been paid for by Mr. Lynch, it would have been immaterial; and, secondly, that as the voter here claimed upon an inchoate right, assimilated to service, he was entitled to vote immediately. Now as to the right itself: when such an inchoate right exists, the party claiming in virtue of it may absolutely demand admission, and no discretion rests with the corporation upon the point: a criminal information would doubtless lie against the officer who should refuse it, and many instances have occurred where such conduct has been visited by the severe displeasure of the House. In the *Great Grimsby case*,† the mayor was ordered into the custody of the Serjeant at Arms, because, amongst other things, he had refused admission to parties who were entitled to their freedom, and claimed it at a court held the day only before the election. Again, in the *Wexford*

* Cor. & Dan. 175. See also *Drogheda case*, ib. 99; and *Bristol case*, 1 Doug. 260.

† 2 Peck, 75.

case,* although the corporate officer was not punished, and it having been estimated before the committee, that the stamps had been duly purchased, and a court for admission demanded, all the persons who had so claimed in respect of their inchoate right were put upon the poll. Thus then is the law of parliament, but authority is not wanting to prove that it is also the common law of the land. In *The King* v. *Osborne*† six persons had claimed to be admitted freemen, and to vote in that capacity at the election of the mayor of Hythe: the ordinary fine had been tendered, but the existing mayor had refused to admit them. In giving judgment in this case, Parker, C. J., said, "the six voters so excluded ought to be allowed. The tortious refusal of the mayor does not make their votes void, for admittance is only a ceremony introduced and used for more order and regularity." This then is the state of the law touching these inchoate rights: if it be once established, therefore, that the vote of William Grey falls within the exception in 4 Geo. 4, c. 55, the argument as to occasionality at common law is entirely beside the question. The *Durham case*, which has been cited on the other side, was decided on the principle of the common law; but since that, the statute has expressly defined in what case a freeman's vote shall be considered occasional, and what cases are excepted, and by that statute the Committee, it is submitted, must on the present occasion be governed.

Now in order to make it clear that this class of voters falls within the exception in 4 Geo. 4, it will be desirable shortly to advert to the history of the borough of Galway. The Irish Act, 17 & 18 Car. 2, c. 2, empowered the lord lieutenant and council to make rules for the better regulating of corporations, and the electing of magistrates and officers therein.‡ Certain regulations,

* Hudson on the Elective Franchise in Ireland, Appendix, 430.

† 1 Comyns, 240.

‡ Hudson on the Elective Franchise in Ireland, p. 138.

in pursuance of this statute, were accordingly made for the town of Galway, but these having been found to be not sufficiently effectual, further provisions were added and consolidated with the former in the Galway Act. Amongst other things it was therein provided, that persons claiming their freedom, were to "take the usual oaths of freemen, and also the oaths of allegiance and supremacy, and make and subscribe the declaration against transubstantiation, before the mayor of the town, who is required to administer the same." The admission, therefore, was not left to the discretion of the mayor, but he was required to administer the oath. The right and title of the voter was complete, but it was necessary for him to demand admission. A case has been cited from Cowper, where this provision was under consideration, and where a quo warranto had issued against ten persons in respect of the general right as freemen, and two others, claiming under the Galway Act. A passage from that case has been cited on the other side, but others, still more important, have been omitted. Lord Mansfield there goes on to say,* "Marshall and Grubb claim to be freemen under the act of parliament and not by election, and, therefore, the issue as to them is an immaterial issue, being joined on the election." Again, Mr. Justice Aston says, "As to the statute, 4 Geo. 1, that statute gives a man a right only to the freedom of the town." Now what interpretation is to be put upon that word? why, undoubtedly, that the right was perfect, and that he had only further to go and demand the oath to be administered, and be at once admitted. Mr. Justice Willes observes, "My only doubt is as to Marshall and Grubb, for their right to be admitted freemen is different from the others: and if they have performed the requisites of the statute 4 Geo. 1, they are entitled to be admitted, and are by the act declared to be free." No words can be stronger

* Cowper, 502.

[illegible] [illegible] [illegible] [

Galway Act was here again distinctly recognised. But there is a further confirmation still: Until this last statute passed, Roman Catholics could not have been admitted at all; and even after that, doubts were entertained whether they were entitled to admission on an inchoate right, or on an ex gratiâ admission, the expense of the latter being three times the amount of the former. To put an end to that doubt a bill was introduced into the house, which bill became a law* on the 7th of August, 1832. It was entitled "An Act to explain doubts that have arisen respecting the stamp duty payable by freemen of corporations, entitled by virtue of trade and residence in the corporate towns and counties of cities and towns in Ireland;" and after reciting, first, that by 56 Geo. 3, c. 56, the stamp duty payable by freemen of corporations, when their admission was in respect of birth, apprenticeship, or marriage, was 1*l.*, and that where the admission was on any other ground it was 3*l.*; and further, "that at all times since the enactment of the said last-mentioned statute, persons who, by virtue of being engaged in trade, mystery, or handicraft, were by any charter or statute entitled to claim, or to take up the freedom of any corporation or company in Ireland as of right, had been universally deemed, reputed and considered as persons claiming or taking up freedom by right of apprenticeship, and had been uniformly admitted to their freedom on payment of the duty of 1*l.* each; but that doubts had lately been entertained on the subject, and that, for the better collection of the revenue, and the more liberal enjoyment of the said franchise or privilege, it was expedient that the said doubts should be removed," it proceeded to enact, "that persons who, in virtue of being engaged in any trade, &c., were or should be entitled to claim or take up the freedom of any corporation in Ireland as of

* 2 & 3 W. 4. c. 91.

right, should be admitted to such freedom upon payment of the same duty as all other freemen by right are admitted to their freedom, that is to say, on payment of the duty of [illegible] only.' Here then is a parliamentary exposition of the situation in which these persons stand. A person born in the situation of persons claiming as 'of right.' The moment that point is established, the objection from occasionality falls to the ground: occasionality, in fact, applies only when votes are made to a particular person, or on a particular occasion, in such cases the law provides, that no person so admitted, ex gratiâ, shall exercise his right until six months after admission. But here the case is very different. William Gore was admitted on a claim of right, and, as such, the stamp act places him on the footing of a person claiming by service.

But it is said, that fraudulent contrivance is evidenced by the number of these admissions, which took place all about the same time: this, however, is easily explained. The act, 2 & 3 W. 4, c. 91, making a 1*l.* stamp sufficient for admission, passed only on the 7th of August: in the very next month accordingly, as might reasonably be expected, a great increase takes place in the number of persons elected and admitted as freemen. The day of swearing in is in truth the day of admission, and that proves to have been the 18th of September; that the signature was not affixed to the stamps until subsequently to that day is of no importance, for, under the indemnity act, the admissions might have been stamped at any time subsequently. Mr. Edmund Blake was, in point of fact, still deputy mayor on the 18th of September, and as he was bound in virtue of his office to admit those freemen upon claim made, and did, in point of fact, swear them in on that day, he was fully justified in signing the admissions subsequently, "nunc pro tunc," and in styling himself, as he did, deputy mayor. As to the case of *Williams* v. *Evans*, which

has been so much relied on by the counsel for the petitioners, that, it will be observed, was totally different upon the facts: what was relied on there, was an ex gratiâ admission: the words of the judgment are, "They had no right at all until admitted ex gratiâ:" the decision, therefore, is manifestly not in point.

The general arguments then, and the cases cited having been thus disposed of, it will next be important to advert to the provisions of the Irish Reform Act. The 9th section contains an express exception in favour of the rights of those who "by reason of birth, servitude, or marriage, or of any statute now in force, shall be at any time hereafter admitted to their freedom in any city, town or borough, sending a member or members to parliament." Here then the voter was admitted by virtue of a statute then in force, and having been so admitted was, so long as he should reside, entitled to vote. But it is said, that he must have been resident also for six months prior to admission, but where is there any authority for that? Honorary freemen, it is true, are subject to certain disabilities, but here is an individual admitted upon a claim of right, and having been, moreover, duly registered, he comes within the 29th section, which provides, "that every person who shall duly register as a voter within this act, at the first session for registering his vote within this act, shall be thereupon forthwith entitled to vote." By the 13th section freeholders are not permitted to vote, unless they shall have been for six months in possession of the property which gives them a qualification; but as there is no such provision respecting freemen, this also is in favour of the vote; so that after all, the question simply is, whether this right is or is not such a statutory right as under the section in the Reform Act will enable the freeman to be admitted, registered, and to vote forthwith.

The chairman here directed the attention of Mr. *Harrison* to the terms of the oath, Schedule C., No. 9,

headed thus: "Oath to be taken by resident freemen and 40s. freeholders, whose rights are saved," and to the 6th section, which imposes no condition of residence on the 40s. freeholders, whence it might be inferred, that the residence there contemplated applied to freemen only.

Mr. *Harrison*:—This oath applies to residence generally, and not to residence as freemen. The Galway Act does not prescribe any specific period of previous residence, and the 9th section only provides that at the time of voting they shall continue residents, the words being, "but so long only as they shall continue to reside." So, again, Mr. Serjeant *Merewether* has insisted on a supposed necessity that the mayor also should have been a resident, or that he could not have been duly appointed; by the Galway Act undoubtedly such residence would have been requisite, but the Newtown Act* subsequently rendered it no longer necessary.

Mr. *Rogers* replied shortly on the *Worcester case*, contending that the question of occasionality was never in that instance fully raised; the point there was, whether the agreement made by Colonel Davis's agents was or was not corrupt.

The vote of William Grey rejected.

The Committee resolved, that the vote of William Grey was not a good vote.

The Committee then adjourned to the following day, that Mr. *Harrison* might be enabled to ascertain how far this decision would affect the case of the sitting members: and, accordingly, on that day, Mr. *Harrison* intimated that any further opposition on the part of Mr. Maclachlan would be withdrawn The number of freemen then struck off the poll altogether was six hundred and eighty-eight.

Decision of the Committee on the general merits.

The Committee resolved, that Andrew Henry Lynch, Esq., was duly elected; that Lachlan Maclachlan, Esq. was not duly elected; that Martin Joseph Blake Esq.,

* 21 Geo. 2, Ir. c. 10.

was duly elected, and ought to have been returned; that neither the petitions nor the opposition to them appeared to be frivolous or vexatious. That the Committee have also to inform the House, that they have altered the poll taken at the election, by striking off the names of William Grey, &c., (six hundred and eighty-eight names), as not having had any right to vote at such election.

CASE XXI.

COUNTY OF CARLOW.

The Committee was chosen on the 14th May, 1839, and consisted of the following members.

Sir Robert Heron, (Chairman,) *Peterborough.*

Joseph Hume, Esq. *Middlesex.*	John Fenton, Esq. *Rochdale.*
Charles Manners Phillipps, Esq. *North Leicestershire.*	Henry Lambert, Esq. *Wexford County.*
John Jervis, Esq. *Chester.*	John Bennfey Rooper, Esq. *Huntingdonshire.*
Benjamin Hall, Esq. *Monmouth.*	James Brougham, Esq. *Kendal.*
Sir. George Elliot. *Roxburghshire.*	Sir William Molesworth, Bart. *East Cornwall.*

Petitioners—(1) Henry Bruen and Thomas Kavanagh, Esqrs. (Candidates); (2) Electors.

Sitting Members petitioned against—Walter Blackney and Thomas Wallace, Esqrs.

Counsel for the Petitioners—Mr. Harrison, Mr. Follett, Mr. Alexander.

Agents—Messrs. Mundell.

Counsel for Petitioners defending the Return—Mr. Serj. Merewether. Mr. D. Pollock.

Agent—Mr. Baker.

Petition. THE Petition contained allegations that many persons had been admitted to be registered to vote who had not, at the time of registering or voting, subscribed the oaths required by law; that others had been registered in respect of freeholds and leaseholds of insufficient value; and that others had not been in possession for six months previous to registration. It also alleged that

neither of the sitting members had a sufficient qualification to entitle them to be elected or returned.

The sitting members had given notice that they should not defend their seats. But certain of the electors having been admitted on their petition to defend the return, the case was conducted on their behalf

The numbers at the close of the poll were as follows: Mr. Blackney, 657; Mr. Wallace, 657; Mr. Bruen, 483; Mr. Kavanagh 470. The Poll.

The counsel for the petitioners commenced their case with the scrutiny of votes. The first entered upon was that of James Brohan: the voter had been objected to before the registering barrister, but had been admitted. The counsel for the petitioners objected to the vote being gone into, on the ground that it was not competent to the Committee to question the qualification of a voter whose name appeared on the register. Mr. *Follett*, for the petitioners, argued in support of the jurisdiction of the Committee, and relied on the decisions of the Committees in the cases of *Longford* and *Galway Town*. The arguments were substantially the same as those which have been given in the report of those cases. The decision, however, of the Committee differed from those of all the other Committees on Irish petitions. The chairman informed the counsel, that after the most anxious deliberation the Committee were of opinion that they ought not to enter into the qualification of James Brohan.

Scrutiny.

Brohan's vote.

Held, that the Committee had no jurisdiction over a vote where the name had been inserted on the register, even though the vote had been objected to before the barrister.

The next vote entered upon was that of Thomas Byrne, to whom the objection was, that the affidavit signed by him was not in conformity with the form prescribed by the Schedule C. (No. 7) of the 2 & 3 W. 4, c. 88. He was a 10*l.* leaseholder, and in the affidavit which he had signed, the words "that I am in the actual occupation thereof," required by the form of the affidavit set apart for that class of voters, had been omitted. The clerk of the peace, who produced the affidavit taken by

Byrne's vote.

Held, that where certain words prescribed by the statute had been omitted in the affidavit signed by the voter, the vote was not thereby invalidated, it being the duty of the barrister

[illegible] that the affidavit was in [illegible] form.

[illegible] that the printed forms of the affidavits had been supplied by the agents, whose fault it therefore was if there had been any omission.

Mr. [illegible], in support of the objection, relied on the 18th section of the act, which required every voter to verify his title by affidavit, and to subscribe the oath set forth in Schedule C., with which provision it was clear that the voter had not complied.

Mr. *Pollock*, in support of the vote, contended, that in consequence of the former resolutions of the Committee that they could not open the register, the objection to this vote could not be entertained. The taking the affidavit required by the act formed part of the process of registration, and the barrister had admitted the voter on this affidavit; the vote could not therefore now be questioned.

The chairman, interrupting Mr. Pollock, stated that it was the opinion of the Committee that the words of the 20th section were conclusive against the objection. It was the duty of the assistant barrister to see that the affidavit signed by him was in the form required. The voter could not be allowed to suffer through the fault of the officer.

After this decision, an adjournment till the following day was requested by Mr. *Follett*, who stated that he had been taken by surprise by the decision which had just taken place. The application not being opposed by the other side, was acceded to by the Committee.

Doyle's case.

In the next case (that of Patrick Doyle,) the objection to the voter was, that, being a Roman Catholic, he had not taken the oath directed by 10 G. 4, c. 7, to be taken by voters of that religion.

Mr. *Pollock* took a preliminary objection to this vote being entered on, and submitted that the case came within the principle of the preceding resolution, and that as the Committee had resolved that the certificate given to the voter was conclusive as to the right of voting, it

must be considered to be equally so as to all oaths required to be taken. The Committee, however, decided on hearing the facts of the case.

A copy of the oath taken by the Catholic voters at the election was produced by the clerk of the peace, from the original in the Rolls office in Dublin.* This oath varied in several respects from the form of oath prescribed by 10 G. 4, c. 7, s. 2; more especially in the omission of the words—"I do solemnly swear that I never will exercise any privilege to which I am or may be entitled, to disturb or weaken the Protestant religion or Protestant government in the United Kingdom."

Held, it is not necessary that the oath prescribed by the 10 G. 4, c. 7, should be taken by Catholic voters at elections in Ireland.

The clerk of the peace stated, that the copies of the oath administered to the voters had been given by him to the commissioners: they had been copied by his clerks, as he thought, from the 10 G. 4, c. 7, and he was not aware till he came into the Committee Room, that there was any mistake in the form. It appeared that Mr. Blackney, the sitting member, had himself been one of the commissioners who administered the oaths.

Mr. *Follett*, in support of the objection:—The point in dispute in this case will resolve itself into the question whether the Reform Act dispenses with the necessity of taking the oaths previously required from Roman Catholic voters. By a positive enactment of the legislature the Roman Catholics were deprived of the right of voting; that right was afterwards restored, upon the condition of taking certain oaths. It remains to be seen whether the condition has been dispensed with by subsequent enactments.

The statute 1 W. & M. c. 8, first took away the elective franchise absolutely from Catholic voters, and the stat. 1 Geo. 2, c. 9, extended the disability to Catholics, though not convicted. Early in the reign of G. 3, the

* The original had been sent thither by him on receiving it from the Commissioners.

restrictions were considerably relaxed. In the year 1773 an act was passed which, though not immediately referable to the right of voting, was still material, because in the subsequent statutes relating to elections the oath prescribed by it was required to be taken. It was an act for enabling subjects of other religious persuasions to testify their allegiance to his Majesty, and provided "that any person professing the popish religion might go before the judges of the King's Bench, or before a justice of the peace, or magistrate of the county or city where he might be resident, and take and subscribe the oath and declaration therein mentioned." In the year 1793 an act was passed which provided, "that such parts of all oaths as were required to be taken by persons in order to qualify themselves for voting at elections of members to serve in parliament, and also such parts of all oaths required to be taken by persons voting at elections for members to serve in parliament, as imported a denial that the person taking the same was a papist, or married to a papist, or educated his children in the popish religion, should not thereafter be required to be taken by any voter, but should be omitted by the person administering the same; and that it should not be necessary, in order to entitle a papist, or person professing the Roman Catholic religion, to vote at an election of members to serve in parliament, that he should, at or previous to his voting, take the oaths of allegiance and abjuration, any statute then in force to the contrary of any of the said matters in any wise notwithstanding." But the 14th section provided, that no benefit should be taken under the act by any Roman Catholic, unless he should have first taken and subscribed the oath and declaration by that act prescribed, and also the oath appointed by the 13th and 14th G. 3, c. 35. The 15th section provided, that certificates should be granted to persons who had taken and subscribed the oaths; and the 16th section required that these certificates should

be produced by all Roman Catholics seeking to vote. Subsequent statutes introduced a different mode of giving the qualification. The 37 G. 3, c. 47, s. 19, provided, that the oaths and declarations might be taken and subscribed at any time before the teste of the writ. The 51 G. 3, c. 77, s. 3, enlarged the time up to the moment of offering to poll. The 4th section of the latter act also directed that the returning officer should appoint two or more justices of the peace to be commissioners to administer the oaths and declarations, in some convenient part of the court or place where the election should be carrying on; and that the clerk of the peace, or his deputy, should attend to give certificates to the parties taking and subscribing them.

Thus stood the law up to the passing of the Catholic Relief Bill. That statute did away with the oaths and declaration previously required, but substituted for them an oath contained in the 2d section of that act. As regards the administration of that oath, the 6th section provides "that the oath shall be administered in the same manner, at the same time, and by the same officers or other persons as the oaths for which it is hereby substituted are or may be now by law administered." And it goes on to declare "that in all cases in which a certificate of the taking, making, or subscribing of any of the oaths, or of the declaration now required by law is directed to be given, a like certificate of the taking or subscribing of the oath hereby appointed and set forth, shall be given by the same officer or other person, and in the same manner as the certificate now required by law is directed to be given, and shall be of the like force and effect." According, then, to the Catholic Relief Act, it was absolutely necessary that the oath prescribed by that statute should be taken before the commissioners directed to be appointed by the 51 G. 3, and that the certificate required by that statute should be in like manner given. It is clear that the oath taken must be the oath prescribed by the statute. In two cases which

have occurred since the passing of that statute, the cases of *Limerick** and *Galway Town*,† votes were struck off because the wrong oath had been taken.

It remains to be seen whether the Reform Act has dispensed with the oath prescribed by the 10 Geo. 4, c. 7. The 19th section of this act provides, it is true, an oath to be taken in lieu of former oaths. But that section applies to the registering, and not to voting; and cannot, therefore, apply to the present case. The 54th section of the act will be relied on by the other side. It provides, that persons shall be admitted to vote on taking the oath thereinafter mentioned, without any other oath or examination. But it is clear that that section applies only to oaths which could have been taken at the poll. Now under the former acts, the oaths required to be taken by the Roman Catholics could not have been taken at the poll: for it was necessary that the voter, on coming to the poll, should produce the certificate of his having taken the oaths required of him. If, then, the necessity for taking the oath prescribed by 10 G. 2 still remain, it is clear that that condition has not been complied with in the present case; for though an oath has been administered to the voter, a material part of the oath prescribed—a part purposely introduced by the legislature, as a safeguard and protection to the Protestant religion, has been omitted.

Mr. *Pollock*, for the sitting member:—Three questions present themselves on this case: 1st, whether it is necessary that the oath required by 10 G. 4, c. 7, should be taken by the Catholics at all? 2ndly, whether, if the oath be necessary, there has not, in this case, been a sufficient compliance with the provisions of that statute? 3rdly, whether, even assuming the oath taken by these voters not to be conformable to the enactment of the statute, the voters can be allowed to suffer by the neglect of the proper officer?

* Minutes, 3d May, 1830. † Minutes, 3d March, 1831.

As regards the first point, it is true, that in the *Limerick* and *Galway cases* it was held, that the oath must be taken. But both those cases occurred before the passing of the Reform Act; and it is submitted that that act has dispensed with the necessity of taking the oath.

The 19th section of the Irish Reform Act provides, that where the barrister is of opinion that any claimant is entitled to be registered, "he shall verify his title by affidavits, and shall take and subscribe (as the case may be) the oath stated in schedule C., to the act annexed, instead of any oath or oaths which, by the law now in being, he would be liable to take or subscribe." Then the 28th section goes on to enact, that a certificate of his registry shall be given to each voter; and, lastly, the 54th section provides, that a certificate, or in default of it, the original affidavit of registry "shall be conclusive of the right of voting of the person named therein; and that the returning officer or his deputy, upon the production of such certificate or affidavit, upon his taking the oaths thereinafter mentioned, if required so to do, shall admit such person to vote, without any other oath or examination." Now "the oaths thereinafter mentioned," do not relate to the oath required by 10 G. 4, c. 7. It is clear, therefore, that the necessity for taking this oath is done away with by the recent statute. For at what period could it be required to be taken? Certainly not at the poll; for the returning officer would manifestly violate the express enactment of the statute, if he received or required any other oaths than those specified: certainly not at the registration; for there the oath contained in schedule C. is substituted for all other oaths which, by the law then in being, the party would be liable to take. The oath in question is one of the oaths which, by the previous law, the voter would have been liable to take: it is not excepted out of the general provisions of the statute, which sub-

[redacted] the requisition, the oath contained in sche- [redacted] the election, the oaths specified in [redacted] the requisition of the previously exist- [redacted] The requisition is all probability, intended to [redacted] additional and continuous distinctions between [redacted] Protestants. Such an intimation may be [redacted] by reasoning, but throughout the act no [redacted] is made to any distinction between Protestants [redacted] Catholics, neither of whom are named. As each [redacted] voter is successively examined, the franchise [redacted] conferred on "every person of full age, and not [redacted] by any legal incapacity." Now the term, "legal [redacted] applies to insanity, idiotcy, conviction of [redacted] but not to the omission to take a particular oath. [redacted] the words, therefore, it is impossible not to con- [redacted] that the necessity for taking the oath required by [redacted] was superseded by the recent statute.

But, even assuming for a moment, that the necessity for taking the former oath still exists, has there not been a sufficient compliance, so far as the voter is concerned, with the provisions of the statute? In the first place, it is required by [redacted] that the clerk of the peace, or his deputy, shall attend the commissioners and prepare the rolls as shall be taken. The voter has [redacted] to any such precaution in him. Assuming that [redacted] to be insufficient, can he, after having to the best [redacted] his ability and knowledge complied with the pro- [redacted] of the statute, be prejudiced by the omission of the officer, to whom the law has confided the manage- [redacted] of the election? If such a doctrine were held [redacted], it is obvious that the whole Catholic constituency [redacted] be subject to the mercy of the clerk of the peace. But in this case, the fact of the oath being defective [redacted] not even been proved. A copy only of the oath [redacted] administered has been produced; the clerk of [redacted] peace cannot swear that this oath was administered [redacted] this individual voter, and neither the deputies who

attended, nor the commissioners who administered the oaths, nor the voter himself, have been called. If any thing then be left for presumption, it is clear that the presumption must be in favour of, not adverse to, the vote. But, in truth, there is here no room for presumption. For the 23rd section of 10 G. 4, c. 7, provides, that the certificate of the officer shall be sufficient evidence of the voter having taken and subscribed the oath. Now here the voter has received that certificate. It must be taken, therefore, that the oath has been duly administered according to the provisions of the statute.

Mr. *Alexander*, in reply:—The certificate, though primâ facie evidence of the voter having taken the oath required by 10 G. 4, c. 7, is not made conclusive by that statute: and in this case it has been proved, that the oath taken was not the oath required by that statute. Both in the *Limerick* and *Galway cases* similar certificates had been given, but the Committee held, that the oath set forth in 10 G. 4, must be taken in precise terms.

The Committee deliberated for some time; after which the chairman informed the counsel, that the Committee had come to the decision, but not unanimously, "that it is the opinion of this Committee that it is not necessary that the oath contained in the act 10 G. 4, c. 7, should be taken by Catholic voters at elections in Ireland."

Case of the qualification.

The counsel for the petitioners then abandoned the scrutiny, and proceeded to the question of the qualification of Mr. Blackney, one of the sitting members. The particulars of qualification delivered in by him to the clerk of the House, set forth the names, situation, contents and annual value of the lands, by which he claimed to make out his qualification, but omitted to state the rental of any portion or the names of the tenants. The value of part of the lands mentioned in the particular, called

[redacted] was stated to be 2000*l.* and the aggregate value of all the seats to be 1000*l.* per annum, "over all [redacted]."

A [redacted] of objections, originally taken by the petitioners, namely, that the recognizances given in by the sitting member and his sureties were void, or the names of the sureties were misstated, in consequence of the opinion expressed by the Speaker and other influential members of the House in the case of the return for Dover,* that a non-compliance with the letter of [redacted] would not of itself be sufficient to vacate the seat.

The grounds of objection relied on were, that part of the sums were not freehold, and that the remainder were not of sufficient value to render a qualification.

It was proved that the seats at Bailly-cormack were held under a lease for 99 years, dependent on the lives of the sitting member and his two brothers, at a rent of 20*l.* per annum, payable to a Mr. Bagnall. Judgments were proved for securing different sums, amounting in the whole to 1672*l.* In this sum were included two annuities of 150*l.* and 140*l.* bequeathed to the sister of the sitting member by the will of the late Mr. Hamilton, which, after giving other legacies, went on to declare that all such legacies should be raised and levied out of the real and personal estate: after which he disposed of the real estate in favour of the sitting member. There were besides four annuities, amounting, in the whole, to 45*l.*, the earliest of which was granted in the year [redacted], the latest in 1811.

Mr. *Fulton* and Mr. *Alexander*, for the petitioners:—The statute of 9 Anne, c. 5, requires that every member for a county shall possess a qualification of 600*l.* a-year in land, "over and above all incumbrances that may affect the same." The provisions of that act are made applicable to Ireland by the 4th article of the Act of

* See that case *post*.

Union. The lands of Bally-cernuck have been shown to be leasehold only. The legacies are charged on the land, and will carry interest: * they are, therefore, "incumbrances affecting the lands;" and the fact of judgments having been given as a collateral security will not remove the lien from the land. Moreover, as the judgments have been entered up, although the judgment creditors could not proceed to sell the lands, without having first extended the lands by elegit, they also, till satisfied, would be incumbrances on the land. Annuities, also, are "reprises" within the statute of Anne. Now, if the amount of these legacies and annuities be deducted from the annual value of the lands on which the sitting member relies, it is clear that the qualification will not be sufficient in point of value.

Mr. Serjeant *Merewether*:—It was clearly held in the *Lincoln case*, that judgments by themselves do not affect the lands, and are not charges within the meaning of the statute of Anne.

The chairman here put it to Mr. *Alexander*, whether he pressed the judgments? To which he replied, that he did not.

Mr. Serjeant *Merewether* in continuation:—Then as to the legacies. The lands on which the legacies are charged, are not mentioned in the particular of the sitting member. No evidence has been offered to identify the lands of Mr. Blackney with those left by the testator. There is no evidence, therefore, to fix the lands with the annuities. And it is fully established, that nothing can be presumed adversely to the sitting member, but that every thing against the qualification must be strictly proved by the party disputing it.† As regards the annuities, it is to be observed, that the peti-

* *Maxwell* v. *Wettenhall*, 2 P. Wms. 25; *Carter* v. *Carter*, 1 Ves. sen. 169.

† *Coventry case, ante*, p. 284; *Lincoln case, ante*, p. 375.

tioners have only produced memorials which show that those annuities were granted; they have not proved that they are still subsisting—a fact which the Committee will not supply by presumption. Indeed, the remoteness of the date of these memorials would rather afford a presumption the other way.

The Committee resolved, that the disqualification of Mr. Blackney had not been proved.

The counsel for the petitioners then abandoned their case.

The Committee then declared the sitting member duly elected, and that neither the petition nor the opposition to it were frivolous or vexatious.

Incidental points.

Incidental points:—While the qualification of Mr. Blackney was under discussion, a lease was proposed to be put in, by which the lands of Bally-cernuck were demised in 1785 to the father of the sitting member. It was objected to by the counsel for the sitting member, on the ground, that its connection with the sitting member had not been sufficiently established. But evidence having been adduced to show that there were no other lands called Bally-cernuck in the parishes of Loram and Skygerff, in which the sitting member had in his particular stated the lands to be situate, and also that rent had been paid to the son of the lessor by the steward of Mr. Blackney, and that that gentleman frequently busied himself on the lands referred to in the lease, the Committee decided, that the deed should be received in evidence.

Memorials of annuities admitted in evidence.

Memorials of annuities being tendered by the counsel for the petitioners, to prove the annuities having been granted, were objected to by the counsel for the sitting member, on the ground that the petitioners ought first to have given notice to the annuitants to produce their deeds, which had not been done. The counsel for the petitioners, in support of the evidence, relied on the

decision of the Court of King's Bench, in the case of *Rowe* v. *Brenton*.*

Judgments were also permitted to be proved by the production of copies which had been examined with the originals, by the witness reading the copy while the officer of the Court of King's Bench in Ireland read the originals.

Judgments proved by examined copies.

* 8 B. & C. 755; and see 1 Phil. Evid. 445; and *Doe* v. *Kilner*, 2 C. & P. 289.

CASE XXII.

BOROUGH OF CLONMELL.

The Committee was chosen on the 16th of May, 1833, and consisted of the following members.

Sir B. W. Guise, (Chairman) *East Gloucestershire.*

Sir Samuel Whalley, *Mary-le-bone.*	Edw. Romily, Esq. *Ludlow.*
Martin Joseph Blake, Esq. *Galway Town.*	Dan. Whittle Harvey, Esq. *Colchester.*
John Hor. Lloyd, Esq. *Stockport.*	A. Leith Hay, Esq. *Elgin.*
J. R. Todd, Esq. *Honiton.*	Jos. Sam. Crompton, Esq. *Ripon.*
Ph. H. Howard, Esq. *Carlisle.*	J. H. Talbot, Esq. *New Ross.*

Petitioners—Electors.

Sitting Member—Dominick Ronayne, Esq.

Counsel for the Petitioners—Mr. Harrison, Mr. Follett, and Mr. Austin.

Agent—Mr. Baker.

Counsel for the Sitting Member—Hon. C. E. Law and Mr. John Smiley.

Agent—Mr. Power.

The petition.

THE only allegation of the petition which was proceeded on before the Committee, was one which objected to the correctness of the register, on account of the insufficiency of the votes in respect of value, the barrister having, notwithstanding objections made in each case, admitted persons on the register, who would swear their property was "worth to them" 10*l.*

At the outset of the case, an objection was taken by the counsel for the sitting member to the receipt of the poll. It appeared that the poll-books had been kept open on the table of the mayor's private office, which was locked at night, till the 2nd of January. On that day the mayor, having been informed by the assessor that he must deliver the poll-books to the clerk of the peace, made the affidavit required by 1 Geo. 4, c. 11, s. 2, preparatory to delivering the books to that officer, who was that day expected at Clonmell. The clerk of the peace did not, however, arrive on that day, and the books were given over to the deputy clerk of the peace on the 5th of January, which was after the expiration of the twenty-one days allowed by the statute. It was objected that the poll-books, not having been delivered in time to the town clerk, who was the officer described by the statute, could not be received. But the clerk of the peace and his deputy, having proved that the books were in the same state as when delivered to them, they were admitted to have been sufficiently authenticated.

Poll books delivered by the returning officer to the clerk of the peace instead of the town clerk, and, after the time allowed by the statute, having been sufficiently authenticated, admitted in evidence.

At the election the sitting member and John Bagwell, Esq., were the candidates. The numbers on the poll were:—for the sitting member 262, for Mr. Bagwell 212.

A single class of voters, comprising, however, between 70 and 80 in number, was presented to the consideration of the Committee. The ground of objection was the insufficiency of the value of the tenements, in respect of which they have been registered. They were, for the most part, inhabitants of cellars, and had been inserted on the register as occupiers of houses. A single vote only was gone into; the decisions of the Committee upon which precluded the necessity of investigating the others.

This vote was that of Michael Darey. He was, in

Mich. Darey's case.

fact, the occupier of a cellar; in the register, and in his own affidavit, he was described as "occupier of a house, No. 4, Dublin-street, Clonmell."

The Committee have jurisdiction to inquire into votes admitted by the revising barrister, if bonâ fide challenged before him, and objected to in the manner prescribed by the 18th section.

Previously to this case being entered into, Mr. *Law*, for the sitting member, took a preliminary objection, that the Committee were not competent to question the correctness of the register. The arguments were substantially the same as those urged in the former cases of *Longford*, and *Galway Town*: it will, therefore, be unnecessary to repeat them.*

After hearing Mr. *Harrison* on the other side, the Committee came to the following resolutions:—

"That the Committee deem they have the power and jurisdiction to inquire into the lists of the electors admitted by the registering barrister."

"That they will receive evidence to expunge votes, in cases only where the right was bonâ fide challenged before the registering barrister."

May 20. Explanatory resolution.

On a subsequent day they added another resolution explanatory of the foregoing:—"That the Committee will consider those votes only to have been bonâ fide challenged, in which the objection shall be directly proved to have been taken in the manner prescribed by the 18th section of the Irish Reform Act."

Mr. William Smith, a merchant in Clonmell, was then called. It appeared from his evidence, that having belonged to the party opposed to Mr. Ronayne, and being acquainted with the value of houses in Clonmell, from having been employed some years before to make a valuation of houses in the town, he had given instructions to Mr. Welsh, a barrister, to act at the registry on

* One observation, however, which was urged by Mr. Law as an argument to show that committees had no appellate jurisdiction, it is believed has not been urged on other occasions, and is deserving of attention—namely, that by the Irish Reform Act committees have no power to alter the register. If the view taken by all the Irish committees, save one, namely, that committees have this jurisdiction be (and there can hardly be a doubt that it is) correct, this omission is not a little striking, and calls for amendment.

his behalf, and that of Mr. Bagwell, who had not, however, as yet declared himself a candidate, though it was universally expected that he would do so; that he (Mr. Smith) had not, however, paid Mr. Welsh as he expected Mr. Bagwell would do so; that written instructions had been given to Mr. Welsh, to object to all persons whose "places" were thought to be worth less than 10*l.* a-year, and, generally, to oppose all persons who were merely occupiers of cellars; and that when Darey's name was called, he (Mr. Smith) said to Mr. Welsh, "This is one of the cellar-men." The witness further stated, that two objections were taken before the barrister to Darey's vote; 1st, that he was the occupier of part only of a house; 2ndly, that the premises occupied by him were not of the value of 10*l.* a-year.

Voters having been objected to by a barrister employed to oppose them by another voter, but not retained for that purpose; held, that the objections were duly authorized.

Upon these facts Mr. *Law* submitted, that the case was not within the last resolution of the Committee, inasmuch as the vote had not been objected to by any person "duly authorized" within the meaning of the 18th section of the act. For Mr. Welsh having received no retainer from Mr. Smith, could not be considered as his counsel; and Mr. Smith, in giving information to Mr. Welsh, must be considered as merely acting as the friend of Mr. Bagwell.

The Committee resolved, "that the objection to the vote of Michael Darey was duly authorized."

Held, that evidence not given or tendered before the revising barrister could not be given before the Committee, unless the party was precluded from giving it by the conduct or decision of the barrister.

A witness named Graham being then called, it appeared that he had not been examined, or tendered for examination before the revising barrister. Mr. *Law*, on this ground, objected to his evidence being received. He insisted that the Committee, being under the operation of the act a court of appeal, must be limited to such evidence as had been produced before the inferior court. At all events, the question was one on which it was competent to the Committee to exercise their discretion. The present case was one in which a question of value was alone involved. In such cases the

facts would be much better investigated by the local tribunal. If it should be competent to a party to keep back evidence on the inquiry before the barrister, and then to produce it before a committee, the constituency of Ireland would be always unsettled, and the representation would be subjected to the control of the wealthier party.

Mr. *Follett*:—The Committee is not merely a court of appeal. But if it were, it would be impossible that it should be restricted to evidence produced before the barrister. For there the vote may be admitted or rejected, on the testimony of the party alone. But, by the practice of committees, a party is precluded from giving testimony. If the voter had been rejected by the barrister, and had appealed to a judge of assize and a jury, it is clear that he would not have been confined to his own testimony.* This shows that, in appeals from the decision of the barrister, it was not the intention of the legislature that the evidence should be limited to that which had been previously adduced in the inferior court. The case of an appeal to the Quarter Sessions from the decision of the magistrates, is analogous to the present; and on such appeals, additional evidence is in all instances admitted. A committee is sworn to try the merits of the petition; a question involved in which is, whether this class of voters have a right to vote? There is nothing in the Reform Act which precludes the Committee from receiving the additional evidence now offered. Prior to that act it would undoubtedly have been incumbent on them to receive it. Can they then take upon themselves to exclude it? Or if the matter be one on which their discretion may be exercised, will they adopt a course, which, even in cases where the barrister may decide on the voter's own statement, will necessitate the production of evidence super-

* In the case of *New Sarum*, however, the Committee held, that since the Reform Act, the voter might be examined as a witness. *Ante*, p. 317.

fluous and useless, as far as his decision is concerned; and which will have the still more injurious effect of preventing a complete investigation of the truth before the Committee?

The Committee resolved, "that they will receive only such evidence as was taken or rejected by the registering barrister, unless it be shown that the party was precluded from giving further evidence by the decision or conduct of the barrister."

When the barrister had declared that evidence of a particular description would have no influence on his decision, bu had not actually refused to receive it; held, that the party had not been precluded from giving it by his decision or conduct.

Evidence was then adduced with a view to show, that, in consequence of the decision of the barrister on the first cases in which the question of value was raised, it became wholly useless, in the remaining cases, to call evidence to dispute that point. Two witnesses were called, who, in the year 1828, had been employed to value property in Clonmell by the commissioners under a local act for paving and lighting the town. It appeared that these witnesses had been examined in a few of the first cases which occurred before the barrister. They stated before him, as they did before the Committee, that the principle adopted by them in rating houses, was to assess the houses at the improved rent, and not to assess in any case where the improved rent did not amount to 5*l.* per annum. In the cases on which they were examined, they had not personally examined the houses in dispute, but they were acquainted with the value of the houses generally in the same street or neighbourhood, and had, in one instance, inspected the adjoining house. The house so inspected was assessed in the commissioners' books at 6*l.*; the others were either not assessed at all, or the whole house, of which the cellar, in respect of which the voter was registered, formed only a part, was assessed at 5*l.* These witnesses, and two others, who were afterwards called, agreed in stating, that the barrister had declared that the statement of any voter that the premises were worth 10*l.* to him, would be held by him to be conclusive, although the marketable value of the premises might be

considerably less; in consequence of which, after th three or four first cases, no further evidence as to value was offered in opposition to those votes. They admitted, however, that no evidence, which had been tendered to the barrister, had been rejected. One of the valuers produced a list of thirty-eight voters, in whose cases he had been prepared to give evidence of insufficient value; one of the other witnesses deposed, that he had been prepared to do the same in twelve; another in twenty other cases.

Upon this evidence it was contended by the counsel for the petitioners, that they had brought themselves within the exception of the last resolution of the Committee. But the Committee, after argument,* resolved, "That it had not been shown that any party was precluded from giving further evidence by the resolution or conduct of the barrister."

May 22. Adjournment till ensuing day granted on payment of costs. May 23.

Mr. *Harrison* then applied for an adjournment on payment of the costs of the day, till one o'clock of the ensuing day, to give time for the arrival of Mr. Welsh, the barrister, who was expected to arrive by that time. He stated, that the evidence of that gentleman, from motives of delicacy, would not have been required but for the decision of the Committee of the Saturday preceding; since which time the petitioners had used all diligence to procure his attendance. As precedents in support of his application, he cited the cases of *Dublin*,† *Galway*,‡ *Westmeath*,§ *Londonderry*,‖ and *Oxford*.¶ The Committee acceded to the application.

May 23.

On the following day Mr. Welsh attended and gave evidence. His testimony, however, did little more than confirm that of the former witness. It appeared clear from his statement that the voters, on being examined

* The question having been more fully argued after the examination of Mr. Welsh, a statement of the argument is for the present reserved.

† Minutes, 1826. ‡ Minutes, 1826.

§ Minutes, 1827. ‖ *Ante*, p.

¶ *Ante*, p. 165; and see *New Sarum*, *ante*, p. 306.

as to whether their premises were worth 10*l.*, had invariably answered, "they are so to me;" and that the barrister considered this answer sufficient, though it appeared that in this estimate of value were included their own and their wives' earnings, and the profits derived from their various callings (such as rearing pheasants, selling eggs, and the like), carried on in their cellars or premises; and that he had refused to allow any questions as to the amount of rent to be put, declaring, "that no one could be so good a judge of the value of the premises as the occupiers, and that when a voter had taken the oath as to the value of the premises, it was not for him to refuse to register him." In consequence of this view of the question having been taken by the barrister in the earlier cases, Mr. Welsh though prepared with witnesses as to want of value in the remaining cases, had abstained from calling them, conceiving it to be useless.*

Mr. *Law*, upon this evidence, contended that the case had not been carried further than it had been when the Committee came to their previous resolution.

Mr. *Follett*, for the petitioners:—It is abundantly clear, upon the facts which have been proved, that a further investigation of the right of these voters by the Committee ought to take place. It is beyond all question, that the view taken by the barrister as to the mode of estimating value, was an erroneous one. For there can be no doubt that the real meaning of value in these cases, is the marketable value of the premises—of which the rent may be taken to afford a primâ facie criterion—not what the occupier may, by accidental circumstances, be enabled to make by his occupation. Are the petitioners then to be precluded from calling on the Committee to rectify the erroneous decision of the barrister? It is true, the Committee, as a matter of discretion, have laid down as a rule that they will not

* Mr. Welsh stated, that many voters who refused to take the oath that the premises were worth 10*l.* signed the affidavit without hesitation.

[illegible] evidence not tendered before the barrister, unless the parties were precluded from giving it, by the decision or conduct of that officer. But, assuredly, it is a question of no great importance,—so materially affecting the constituency of this borough,—and involving in its consequences the very important consideration of the extent to which it was intended by the legislature that the elective franchise should be exercised—that the Committee will not preclude the petitioners from calling in question the decision of the barrister. If, by a fair and reasonable construction, it can be shewn that the parties were deterred, in consequence of that decision, from offering the evidence as to value, which they now propose to adduce before the Committee. Now it appears that at the registry of this borough, a very numerous class of votes depended on the question of value. In the first cases brought under discussion, the barrister adopted a false criterion of value, and determined that no other evidence should outweigh the estimate of the value of the premises formed and sworn to by the voter himself. Can it be said that, under these circumstances, the parties objecting to these votes did not exercise a proper discretion in abstaining from calling further evidence on the remaining cases? Was it incumbent on them to examine witness after witness throughout seventy or eighty cases of disputed value, if the barrister had expressly declared that such evidence would have no influence on his decision? Such a proceeding would not only have been idle and useless; it would have been an insult to the barrister. The parties in consequence adopted a correct course, in abstaining from producing further evidence, and reserving it for a superior tribunal. They must be considered, therefore, as having been virtually prevented from offering this evidence by the decision of the barrister: they are clearly within the spirit, and by a fair and liberal construction, they are within the letter of the exception contained in the resolution of the Committee.

If the Committee should decide otherwise, not only will serious injustice be done in this case, but in all future registrations, where a numerous class of voters depends on a single question, great and unnecessary loss of time, trouble, and expense will be occasioned, inasmuch as it will be necessary to prove all the facts in each individual case, in order to enable the parties afterwards to appeal to a committee.

Mr. *Law*, in reply, relied on the former decision of the Committee; and contended that the case had not been carried further by the evidence which had been adduced since that decision had been pronounced. He insisted that it was incumbent on the parties to tender their witnesses for examination, and that, as they had omitted to do so, and the barrister had not refused to receive any evidence offered to him, they could not be considered as having been precluded from producing this evidence by the decision or conduct of the barrister.

The Committee adopted this view of the case, and resolved, "That it did not appear that any party was precluded from giving evidence by the decision or conduct of the barrister; but that the Committee would receive evidence as stated in their former resolution."

In consequence of this resolution, the counsel for the petitioners gave up their case.

The Committee then resolved, "That the sitting member was duly elected; and that neither the petition nor the opposition to it were frivolous or vexatious."

CASE XXIII.

COUNTY OF GALWAY.

The Committee was appointed on the 14th of May, 1833, and consisted of the following members :—

Dominic Brown, Esq. (Chairman,) *Mayo County.*

George Sinclair, Esq. *Caithnesshire.*	Charles Adams, Esq. *Clackmannanshire.*
F. L. B. Dykes, Esq. *Cockermouth.*	Lord Charles Fitzroy, *Bury St. Edmund's.*
Edward George Barnard, Esq. *Greenwich.*	Hon. Pierce Butler, *Kilkenny County.*
Charles St. John Fancourt, Esq. *Barnstaple.*	Ralph Etwall, Esq. *Andover.*
Sir E. T. Troubridge, *Sandwich.*	J. Alex. Stuart Mackenzie, Esq. *Ross and Cromarty.*

Petitioners—Electors.

Sitting Member petitioned against—James Daly, Esq.

Counsel for the Petitioners—Mr. Harrison, Mr. Follett, and Mr. Macdermott.

Agents—Messrs. Fladgate, Young, and Jackson.

Counsel for Mr. Daly—Mr. D. Pollock, Mr. Thesiger, and Mr. Hodges.

Agents—Messrs. A. and R. Mundell.

Petition.

THE petition contained various allegations. The subsequent proceedings in the case render it only necessary to state that it raised a question of scrutiny, as well as of bribery by the sitting member. It prayed that the return might be amended by substituting the name of Sir John Burke for that of Mr. Daly, or that the election might be declared void.

On the poll books being produced, it appeared that the usual written affidavit of the sheriff was not annexed to them, nor was the poll summed up; but on an objection being taken to the admission of the poll under these circumstances, it was proved that when the books were delivered to the clerk of the peace, the sheriff took an oath, administered to him by a magistrate, that the books were the poll books of the last election, without any obliteration or erasure. This having been proved the poll books were considered by the Committee to be sufficiently authenticated and were admitted.

Poll books not having the sheriff's affidavit annexed to them, admitted on proof that the sheriff had sworn to their authenticity on delivering them to the clerk of the peace.

The numbers on the poll were:—Mr. Martin 1456; Mr. Daly 1368; Sir John Burke 1356; Mr. Blake 482.

The counsel for the petitioners commenced their case with the scrutiny.

Scrutiny.

On the first vote, that of John Darmody, the counsel for the sitting member objected to the case being gone into, on the ground that the barrister having admitted the vote, the Committee had, under the Reform Act, no jurisdiction. It appeared that no objection had been taken to the vote before the barrister. The arguments were the same as those which have been given in former cases, in addition to which Mr. *Thesiger*, in support of the vote, relied on the recent decision in the *Carlow case*.*

John Darmody's vote.

Held, that the Committee had jurisdiction over votes admitted by, and not objected to before, the barrister.

The Committee resolved, "That the Committee are competent to scrutinise the right of voters admitted by the registering barrister."

The affidavit of the registry of the voter stated his title to be, "a house and land of the clear yearly value of 10*l.* at Muckenaugh," &c., held under "a lease bearing date 1st of Nov. 1831." It was proved that Darmody had occupied the land as tenant at will to a Mr. Martin, a tenant of Mr. James Daly, up to Nov. 1832. Up

A voter registered under a lease executed at the time of the registering but dated back, having previously occupied the land for

* *Ante*, p. 438.

more than six months as sub-tenant to a lessee, from whom he had a verbal promise of a lease; held, not entitled to vote.

to that period Mr. Martin had settled the rent with him and the other tenants of the same estate. In Oct. 1832, shortly before the registry, Mr. Martin was applied to by Mr. James Daly to give up a portion of the lands of Muckenaugh, included in his lease. The surrender took place by letter on the 10th of October. The note of hand given by Darmody and the other tenants to Mr. Martin for the rent, were delivered over by Mr. Martin to Mr. Daly's agent for the balance due from Mr. Martin. Mr. Martin stated in evidence that he had had it in contemplation for a year or two to give up the land: he stated also, that he had promised all the tenants leases two or three years before.

The Committee, after argument, resolved that the vote of John Darmody be struck off the poll.

Patrick Darmody's vote. Same point.

The next vote, that of Patrick Darmody, stood on the same ground, but it was contended by Mr. *Thesiger*, in support of it, that notwithstanding the previous resolution of the Committee, it was incumbent on the counsel for the petitioners to carry the evidence further; that the surrender had not been sufficiently proved, and that the lease, the notes, and the receipts which had been spoken to but not proved, ought to be produced. Their production might vary the evidence before the Committee. If the lease were made at the time of its date, that would have been a virtual surrender by Mr. Martin of the interest he held in the land.

The Committee resolved, "That having put out of view all the evidence relating to the surrender and the notes, and having taken the rest of the evidence into their consideration, the Committee are of opinion that the vote of Patrick Darmody is bad, and must be struck off the poll."

William Ford's vote.
Same point.

The case of William Ford stood on the same grounds as the foregoing. Mr. *Thesiger*, in support of the vote, proceeded to re-argue the question:—Prior to the passing of the Reform Act, six months' possession previous to the election was sufficient. The 2nd section of the 10 Geo. 4, c. 8, provides only that no person shall be admitted to vote at any election for a knight of the shire, unless he shall have an estate of freehold in the county of the clear yearly value of 10*l.*; and the 14th section provides, that any person who shall after the first session of registry, register a freehold according to the provisions of the act, shall be entitled to vote at any election, to be held by virtue of any writ tested six calendar months at least after such registry. The question, therefore, is whether, by the Irish Reform Act, it has become necessary that the lease should be executed not only six months before the election, but six months before the registry. Now all that that act requires* is, "that the voter shall have been in the actual possession or in the receipt of the rents, issues, and profits for his own use, as the case may require, for six calendar months next previous to his registry. Now here the voter has been in possession six months before the registry, and under a lease executed six months previous to the election. He has complied, therefore, with the provisions of both statutes. Neither is it necessary that the possession and the lease should be derived from the same person. If the original landlord, under whom the possession for six months previous to the registering was obtained, had sold the land, and the purchaser had granted a lease six months before the election, this, if a bonâ fide transaction, would be good.

Mr. *Follett*, on the other side, contended that there was a manifest distinction between the two acts: that

* Section 13.

under the Reform Act the period of six months was referred to the registry, which was the time at which under that act the right was to be established, and not as under 41 Geo. 3, c. 21 the period of the election. He relied on a decision on the point in question by the twelve judges in Ireland, on an appeal from Louth.*

The Committee decided the vote to be bad, and fifteen votes similarly circumstanced were afterwards struck off by consent.

The sitting member being absent on a summons, the Committee decided that the petitioners should proceed with their case of bribery against the sitting member.

A majority of two having been thereby established for Sir John Burke, the counsel for the petitioners proposed that the opposite side should proceed to strike off two of the votes of Sir John Burke. The counsel for the sitting member, however, submitted to the Committee, that the petitioners should now be required to proceed with the charge of bribery, on the ground that such a course would be most advantageous to all parties, inasmuch as the scrutiny might go on for many weeks, and the parties be put to vast expense, while it might ultimately be determined that the parties were ineligible,

* The following is a copy of the note of the judge before whom the case was tried:—

"County of Louth. Appeal from registering barrister, Spring, 1833. The registering barrister, at his sessions before January, 1833, rejected the claim of Lawrence Flinn to register as a freeholder of the county, both on account of insufficiency of value and of not having possession within six months, as required by 2 & 3 W. 4, c. 88, s. 13. Upon appeal before me, at the last Spring assizes, the jury found for the claimant on the question of value; and the other question, which I reserved, arises from the following facts:—The claimant had been in possession of the lands for fifty years, under a lease which expired upon the death of George IV. After that he held, without any writing or verbal agreement for a lease, at the same rent as in the former lease. And on the 3d of January, 1832, he obtained a new lease of the same lands, under which he is entitled to register, if he has been six months in possession before the registry within the meaning of the statute.

"May 1, 1833. At a meeting of the judges (C. J. Doherty absent), it was held by all the judges present, that the claim to register was properly rejected."

on account of bribery committed at the election. Mr. *Harrison*, for the petitioners, opposed the application, and submitted, that as the Committee had allowed him to commence with the scrutiny, the fact of the sitting member being now in a minority ought not to prevent the petitioners from proceeding with their case in the manner which they considered most advantageous. The Committee determined that the petitioners should first proceed with the case of bribery against the sitting member.

Charge of bribery.

This part of the case occupied the Committee during several days. As the discussion turned entirely upon questions of fact, it will be unnecessary to give any detail of the evidence. One or two decisions on the subject of agency deserve, however, to be noticed. The rule that proof of agency must be given before acts of bribery committed by the supposed agent can be given in evidence, was adopted by the Committee and acted on throughout the case. In the following instances the Committee came to decisions as to how far agency had or had not been proved.

Held, that agency must be proved before acts of alleged agent could be given in evidence.

Primâ facie case of agency held to be established.

A Mr. Dennis Clarke had been frequently in Mr. Daly's committee room when Mr. Daly was present, and persons during the election were directed by Mr. Livesey, the law agent of Mr. Daly, to go to Mr. Clarke for their expenses. It was shown that on such occasions payments had been made by Mr. Clarke. The Committee decided that a primâ facie case of agency had been made out.

Case of primâ facie agency.

In another case, a Mr. Charles Blake was proved to have canvassed with Mr. Daly, and to have been frequently in the committee room when Mr. Daly was there. He took an active part, and held frequent communications with Mr. Daly; more so than any other person. Upon these facts the Committee held that sufficient proof of agency had not been given. Further evidence was then adduced, from which it appeared,

that Mr. Blake had gone out with bludgeon men to keep back Sir J. Burke's voters; that he had given directions to bring up carriages, which had been engaged for the purpose of the election, and that he had canvassed a voter, offering him "good expenses." Upon this evidence the Committee determined that a primâ facie case of agency had been made out.

Mr. Clarke and Mr. Livesey, the law agent of the sitting member, were called on the part of the latter, to rebut the evidence given as to Mr. Clarke's agency; and evidence was given to show that the payments alleged to be bribes, were only the payment of expenses of voters who came from a distance, which payments had, in some instances, been as low as 5*s.*, in none higher than 5*l.* Other alleged acts of bribery were also negatived in evidence.

Charge of bribery held to be not made out.

The Committee resolved that the carge of bribery had not been established against the sitting member or his agents.*

Scrutiny resumed.

The counsel for the sitting member then proceeded with the scrutiny of the votes of Sir John Burke. They commenced with a class of voters, the objection to whom was, that their leases had been antedated in order to enable them to register. The leases bore date

* After the above resolution had been passed, Mr. Pollock stated that the sitting member was ready to proceed with a charge of bribery against Sir John Burke. Mr. Harrison contended, that as Sir John Burke was not a party to the petition, the Committee had no authority to receive any evidence of bribery by him or his agents, and he cited 2 Peck. 190. The counsel for the sitting member replied, that in the cases of Southampton and Galway Town (of the present session), the Speaker of the House of Commons had refused to receive petitions, which contained charges of bribery against the then sitting members, in whose favour the returns had been amended on petitions, on the ground that the charges of bribery ought to have been heard and determined by the committees who had declared them duly elected: in neither of these cases the sitting members had been parties to the petitions upon which they obtained their seats. The Committee reserved the point for future discussion, and proceeded with the scrutiny. The petitioners abandoned their case before the point was again raised.

November 1, 1831. The voters were tenants of Mr. Darcy. It appeared that the leases had been prepared in October, 1832. The voters had held without leases, as tenants in common, under a Mr. Rochford, the immediate tenant of Mr. Darcy; but an ejectment having been served by Mr. Darcy on the middleman, Mr. Darcy, in April, 1832, had the land surveyed and divided into certain portions among the tenants, stating that he had made a new contract with them, and that he would divide the lands and give each a part, so as to enable him to register. Mr. Darcy's orders with respect to the leases were as follows:—"Let the leases be dated for 1831; the tenants have been in possession all through; the lands have been in my possession previous to the date of that lease."

Thos. Kenny's vote.

Where a lease had been granted at the time of registry, but dated twelve months back, to a party who was in occupation of the land, as tenant to the party granting it, with an agreement for a lease entered into six months before the registry, held, that such lessee was entitled to vote.

The principal argument as to these votes took place on the case of Thomas Kenny. Mr. *Thesiger*, for the sitting member, contended that there was nothing to distinguish the case from that of Darmody, which had been previously decided by the Committee.* The verbal promise given by Mr. Darcy to the tenants would not give a retrospective operation to a lease subsequently made; for by the Irish Act, 7 W. 3, c 12, the provisions of the statute of frauds had been verbatim re-enacted. Such a contract as the one proved, would not be enforced by any court either of law or of equity.

Mr. *Follett*, contrà:—The distinction between Darmody's case and the present is, that in the former the party making the promise of the lease had not a sufficient interest to enable him to grant one; whereas in the present Mr. Darcy was himself in possession of the freehold. It is immaterial that the promise was a verbal one. A contract having been made to grant a lease by a party competent to make it, the lease will be sufficient

* *Ante*, p. 463.

if at the time it is granted it refer back to the period of the promise.

The Committee decided that the vote should stand on the poll.

The counsel for the sitting member afterwards proceeded with another class of voters, the objection to whom was, that the lease upon which they claimed to be registered was executed in blank by the lessor, Mr. Martin, the other sitting member.

Paul Steely's vote.

The first case was that of Paul Steeley. A witness, named Patrick King, deposed that he had been employed on the 4th or 5th of November, 1832, by Mr. Lennard, the attorney of Mr. Martin, to fill up printed leases, previously executed by Mr. Martin, with the names of the tenants and the quantity of land, and that he had thus filled up fourteen or fifteen leases at Tuam, and some at Clifden. That of the voter was among the number. The leases were usually dated about six months back. The lease in question was not attested at the time of its execution by Mr. Martin, but two persons witnessed the signature of the voter. One of the witnesses stated, that he had signed his name as attesting witness to some of the leases, though he had not seen Mr. Martin sign, because he was perfectly acquainted with his handwriting. Mr. Martin being called as a witness admitted the employment of Patrick King by Mr. Lennard to fill up the leases, and that leases were sent to Clifden and Tuam, partly filled up, executed by him, and attested in most cases, and that in some instances the names of the lessees of the lands were not mentioned. Mr. Martin further stated, that the lease to Steeley was filled in with the name, the holding and the rent. Upon these facts the Committee determined that the vote should be struck off.

In the next case, that of Anthony Strokes, (one of the same class,) a difficulty arose as to the proof of the service of the notice on the voter to produce his lease. In this, as in the foregoing case, notice had been given to Mr. Martin to produce the lease; but in the present case a witness, who swore that he had served two hundred and twenty-two notices to produce leases, among which was one on the voter, at places at a considerable distance from one another in Connemara, failed to gain credit with the Committee. On the next day of sitting, the Committee communicated to the counsel, that they had resolved, "That it is the opinion of the Committee that all leases, of which notice was given to Mr. Martin by Mr. Mundell (the agent of the sitting member), be produced forthwith." Mr. Martin, having, however, stated that the leases were in the possession of the tenants, and that no counterparts had been executed; and it having been suggested by the counsel for the petitioners that great delay and expense would be occasioned by enforcing the production of the leases, and that Mr. Martin even if summoned could not have been compelled to produce any lease—the Committee resolved, "That in consequence of Mr. Martin's evidence, they did not insist at present on the leases being produced." They afterwards determined that there was not sufficient proof of the service of notice upon the voter, Strokes, and his vote was in consequence left upon the poll. Anthony Strokes' vote.

The counsel for the sitting member then submitted, that, as the Committee had decided that sufficient evidence of the service of notice on the tenants had not been given to let in secondary evidence, Mr. Martin should be called on to produce the leases. The Committee, however, refused to accede to this proposition, and resolved, "That Mr. Martin could not, under the present circumstances, be called upon to produce the leases."

On the ensuing day the Committee came to the following resolution:—"That a summons," (which the chairman afterwards explained to signify a notice), "be sent to each of Mr. Martin's tenants in Ballynahinch and Moycullen to produce his lease forthwith." The Committee suggested that, in the mean time, the parties should proceed with some other part of the case.

The vote of a paid agent struck off.

On the part of the petitioners the vote of a party who had admitted himself to have been employed as an agent and paid, was next gone into and struck off the poll.

Mich. Earl's vote.

A conversation between a witness and a third party admitted to prove that a voter had been bribed, on the understanding that the conversation should afterwards be connected with the voter.

The vote next entered upon was that of Michael Earl, the objection to whom was that he had been bribed. A witness was called, who stated that he had been employed to try to prevail on Mr. Martin's tenants to give their second votes to Mr. Daly; that he had no previous talk with the voter, but had given him *5l.* after he had voted. He was then proceeding to state what had passed between himself and another party, named Peter, when the examination was interrupted by the counsel for the sitting member, who contended that the communication must first be brought home to the voter, before it could be given in evidence to affect his vote. It was urged that the case was precisely analogous to that of agency, and that the ground on which the proof of agency was required to be given, before evidence of acts or declarations was admitted, namely, that a prejudice might otherwise be created, which might operate unfairly on the merits of the case, applied equally in the case under discussion. Mr. *Follett*, on the other hand, denied that the case in question was similar to that of agency, inasmuch as here it was sought to strike off a particular vote, to do which it would undoubtedly be necessary to connect the voter with the conversation between the witness and the party whose language it was proposed to give in evidence. The witness having been

proved to have canvassed Mr. Martin's tenants, the object of the evidence now sought to be obtained, was to prove that a promise had been made by Peter to the witness, and communicated by him to the voter, by means of which the latter had been induced to vote for the sitting member.

The Committee resolved, "That the question might be put, but that Mr. Follett should confine himself as closely as possible to the case of Earl and of Earl only." The examination being resumed, the witness negatived the fact of his having had any conversation with Peter about Earl. The vote was in consequence retained on the poll, as were four others of the same class.

Case abandoned by petitioners.

The counsel for the petitioners then gave up their case.

Final resolutions.

A majority was then established for the sitting member; after which the Committee resolved, "That James Daly, Esq., was duly elected, and that neither the petition nor the opposition to it were frivolous or vexatious." They also reported in the usual form the alterations made in the poll.

The sitting member having been present in the committee-room, and being called by the party to whom he was known to be adverse, the Committee decided his evidence should be received.

Incidental points:—On Mr. Martin, one of the sitting members, being called as a witness, Mr. Harrison objected to his evidence being received, on the ground that Mr. Martin had been in the room during the sitting of the Committee. The agent for the sitting member deposed that he had told Mr. Martin on the first day the Committee sat, that he ought not to remain in the room as he would be called as a witness; that subsequently while the examination of a witness was going on, he told Mr. Martin that he must go out, and that

on the latter objecting to do so, he said, he must then serve him with a Speaker's summons, to which Mr. Martin replied, "There was no occasion, for he would go out," which he then did: he had, however, frequently been in the room since. It appeared that Mr. Martin had been requested to attend by a letter from the chairman.

Mr. *Harrison*, in support of the objection, affirmed that it was an established rule, that a party who had been present in a committee room could not be called as a witness. In support of which, he cited the *Aylesbury case*,* in which the witness rejected was a member of the House, and the *Portsmouth*† and *Dublin*‡ *cases*, in the latter of which the witness had only been in the room five minutes while counsel were speaking. In the *Oxford*§ *case* of this session, it was true, the general rule had been departed from, but that was because there the party had purposely attended in the room in order to incapacitate himself from giving evidence.

Mr. *Thesiger*, on the other side, contended that the principle of the rule, which was to prevent a witness watching the proceedings, in order to shape his evidence to meet the case, could not apply in the present instance, in which the witness was known to be adverse to the party calling him. It was obvious, that if Mr. Martin had inquired if the petitioners objected to his remaining, they would have at once consented. The want of a formal application ought not, therefore, to prevent his being called, and interfere with the justice of the case.

* 2 Peck. 265.
† Minutes, 26 May, 1820.
‡ Minutes, 1831.
§ *Ante*, p. 139

The Committee decided that Mr. Martin should be examined.

Thos. Horan's vote.

On the vote of a party named Thomas Horan being about to be gone into, it was contended that the notice in the list of objections was insufficient, inasmuch as there were two persons of that name in the barony, and the notice contained nothing to distinguish the one objected to from the other. The Committee held the notice to be insufficient.

There being two voters of the same name, and the objection not specifying which of the two was meant, objection held insufficient.

Wm. Mitten's vote.

The vote of one William Mitten being objected to, it appeared that in the list of objections the name of the voter was spelled "Miller." An objection having been taken on this ground to the vote being gone into, the objection to the vote was abandoned.

Where the name of the voter, being "Mitten," was written "Miller," in the list of objections, held that the notice was insufficient.

Mannion's case.

Where a notice had been served on a voter to produce a lease under which he held, on the day before the ballot for the Committee, twenty-three days having elapsed in the interim, the Committee, after argument, held that sufficient notice had been given, and that the lease not being produced, secondary evidence might be received.*

Where notice to produce a lease had been served on a voter the day before the ballot, twenty-three days before the period of the discussion, held that secondary evidence might be given.

Soughlehan's vote.

Notice to a freeholder to produce his lease having been proved to have been served on his son at the voter's residence, the Committee held the notice to be insufficient and refused to admit secondary evidence of the contents.

Notice to produce served on voter's son at voter's house, held insufficient.

Held, that evi-

It was held, that the evidence previously given against

* See the cases collected, Rog. p. 263, et seq.; and the common law authorities, 1 Phil. 425; Stark. Ev. 345.

[illegible] voters of a particular class, could not be referred to as [illegible] applicable to another voter of the same class, but must [illegible] be separately struck. Afterwards, however, the former course was agreed to in order to save time.

[illegible]

CASE XXIV.

TOWN AND PORT OF DOVER.

The Committee was appointed on the 21st of May, 1833, and consisted of the following members.

Lord Viscount Clive, (Chairman,) *Ludlow.*

John Humphrey, Esq. *Southwark.*	Francis Baring, Esq. *Tynemouth.*
Charles James Bennett, Esq. *Maidstone.*	William Bolling, Esq. *Bolton.*
Sir John Owen, *Pembrokeshire.*	Benjamin Handley, Esq. *Boston.*
Mark Philips, Esq. *Manchester.*	N. Lamont, Esq. *Wells.*
George F. Young, Esq. *Tynemouth.*	John Bailie, Esq. *Fortrose, &c.*

Petitioners—Electors.

Sitting Member petitioned against—John Halcomb, Esq.

Counsel for the Petitioners—Mr. Harrison, and Mr. Serjeant Ludlow.

Agents—Messrs. Vizard and Leman.

Counsel for the sitting Member—Mr. Follett and Mr. Cockburn.

Agents—Messrs. Price and Bolton.

Petition.

THE petition stated, that at the election the sitting member was required to take the oath as to his qualification required by the statute, and accordingly took such oath, and therein described his qualification to be in lands, tenements, and hereditaments, lying or being in the town of Warwick, in the county of Warwick, and in the parish of St. Pancras, London; that the petitioners were informed that as Warwick is a large town, comprising two distinct parishes, and several streets, lanes, and other subdivisions, and that

the parish of St. Pancras is also a very extensive parish, adjoining to London, and comprising one of the most populous districts in its neighbourhood; that the sitting member had not taken the oath in conformity with the provisions contained in the said statute, inasmuch as he had not correctly or truly stated the parish, township, or precinct, in which the lands, tenements and hereditaments, in respect of which he claimed to be qualified to appear as a candidate, or to be elected or returned, or to sit or to vote as a member of parliament for the said town and port, were situate, and which parish, township, or precinct, ought to have been particularly stated in the said oath. That the petitioners, notwithstanding the vagueness and looseness of the description of the situation of the lands, tenements, or hereditaments, had by their agents made diligent search and inquiries, but had been unable to find out that the said John Halcomb was seised either at law or in equity of any lands, tenements, or hereditaments, in Warwick and St. Pancras, or in either of them, of the annual value of 300*l.*, above reprises, or of any other value whatsoever. The petition further averred, that petitioners believed that the sitting member had not at the time of the election any estate which qualified him to sit in parliament, but that the said sitting member was, for want of such qualification, wholly disabled to sit in parliament.

Facts of the case.

At the hustings, after the nomination, the sitting member was called upon to take the usual qualification oath. It was agreed, however, that a form should be prepared by the town clerk, and the oath be taken on the ensuing morning. From the certified oath it appeared that the sitting member rested his qualification on a rent charge of 300*l.* per annum, charged on certain freehold premises in St. Pancras, Middlesex, and the rent of a house and garden 50*l.* per annum, in the town of Warwick. On taking the oath at the table of the House of Commons, Mr. Halcomb declared his qualification to

consist of the rent charge in St. Pancras and the premises in Warwick, and a rent charge of 200*l.* and upwards, and another of 100*l.* for his own life, secured on messuages in the parishes of Ashley, Buckland, Charlton, Hougham, St. Mary Dover, Sellinge and Smeath, Sturry and Margate, in the county of Kent.

The petition was presented against the return of the sitting member on the day he took his seat. He, however, neglected to deliver in, within the fifteen days prescribed, a statement of the particulars of his qualification, in conformity with the standing order of the 21st of November, 1717. The fifteen days having expired, Mr. Halcomb applied to the House for leave to put in the statement, it then wanting a month to the time fixed for hearing the petition. The application was, however, refused by the House. No application was made by the petitioners to the sitting member to obtain a statement of the particulars of the qualification, or to the House to compel the sitting member to supply the deficiency. On the 16th of May, a week before the first sitting of the Committee, the agents of the sitting member delivered to the agents of the petitioners a statement of particulars, according to which the sitting member claimed to be qualified in respect of a rent charge of 200*l.* and upwards for his own life, granted by John Reynolds of Dover, in consideration of 1850*l.*, and secured on seven messuages, in the occupation of different tenants, in the parishes of Ashley, Buckland, Charlton, Hougham, St. Mary Dover, Sellinge and Smeeth, in the county of Kent; and a rent charge of 100*l.* a-year, for his own life, granted by William Knocker of Dover, gent., in consideration of 900*l.*, and secured on several tenements, called Joiners, in the parish of Sturry, in the county of Kent, and a dwelling-house, shop, and buildings, at Margate, in the same county. The statement also contained the names of the different occupiers and the witnesses to the execution of the deeds and the payment of the consideration

money. A letter was also written from Mr. Halcomb's agents to the agents of the petitioners, informing them that the sitting member did not intend to insist on the qualification in Warwick and St. Pancras.

On the hearing of the case before the Committee, it was further shown that search had been made by the petitioners in Warwick, and that with this view the poor rate and land-tax assessments had been searched through. No trace of any property belonging to the sitting member was found at Warwick. His name appeared in the rate of St. Pancras, in January, 1832, as an occupier, but in the ensuing rate it was not there.

Held, that it was not competent to petitioners to divide the case against the qualification.

The facts above stated having been proved in evidence, the counsel for the petitioners proposed to sum up this part of the case, and to take the opinion of the Committee as to whether, in the event of the Committee being of opinion that the facts stated were not fatal to the qualification, it would not be incumbent on the sitting member to prove the qualification, instead of on the petitioners to disprove it. Mr. *Follett*, for the sitting member, objected to this course, and relied on the decision in the *Lincoln case** of this session, in which it had been clearly held, conformably to the established practice of committees, that the counsel for the petitioners must go through with their entire case, and could not, having been defeated on one part of the case, proceed to another. The counsel for the petitioners relied on the peculiar circumstances of this case, in which the statement of particulars, required by the standing orders of the House, had not been delivered in, and a statement merely had been afforded by the sitting member a week only before the meeting of the Committee, a period wholly insufficient to enable the petitioners to make the necessary inquiries as to property scattered over various parishes, and occupied by so many different parties.

* *Ante*, p. 375.

The Committee, after considerable deliberation, determined that the petitioners should proceed with their case.

Argument against the qualification.

The counsel for the petitioners:—There are, in this case, three objections to the qualification of the sitting member. Firstly, that he had no sufficient qualification at the poll; secondly, that he did not take the oath as to his qualification in the form prescribed by the statute; thirdly, that he has neglected to deliver in to the House a statement of particulars, as required by the standing orders of the House.

It is indispensably necessary that the qualification should be complete and valid at the poll. This position is fully established by the *Leominster case*,* and by the recent *Penryn case*,† in which the petition of Mr. Adey against the return was rejected, because, being a candidate at the election, he had refused to take the qualification oath at the hustings. But here the sitting member has himself abandoned, or in other words, admitted the insufficiency of the qualification to which he swore at the poll. This qualification being admitted to be untenable, two consequences follow:—First, that the sitting member can have had no sufficient qualification at the poll; and, secondly, that he has not taken the oath required by the statute at the poll: for it is clear that the swearing to a qualification which, on further consideration, the party himself admits that he cannot maintain, is equivalent to taking no oath at all. Moreover, the oath taken at the poll is defective in point of form. For it states the property on which the qualification is professed to be founded, to be situate in the town of Warwick, without further description. Now the town of Warwick is divided into two parishes, and the statute 9 Anne, c. 5, expressly requires that the parish in which the property is situate shall be specified. Neither is this a mere technicality;

* Corb. & Dan. 1. † Minutes, Feb. 28, 1827.

for it is obvious that the object of the provision was to afford to all parties interested an opportunity of investigating the qualifications of the candidate.

But a still more important objection is, that the sitting member has delivered in no statement of particulars, in compliance with the standing order of the House.* Upon this part of the case there is an authority expressly in point. In the *Colchester* case† it was alleged "that the sitting member was not capable of being elected or returned, and the objection relied on was, that the sitting member had delivered no particular of his qualification according to the standing order; and the Committee, after an elaborate discussion, held the return to be void. The only difference between that case and the present is, that the sitting member has privately delivered to the petitioners a statement of the particulars of his qualification. But this cannot affect the case, for, in the first place, the petitioners are not called upon to take notice of any private communication made to them by the sitting member, in the place of the public declaration required by the orders of the House; neither can such a proceeding on the part of the sitting member deprive them of any advantage which may result to them from his omission in so important a particular: and, secondly, the space intervening between the time when the information was afforded, and the hearing of the petition, has been utterly inadequate to making the necessary inquiries as to property lying dispersed over an entire county. It may, perhaps, be urged in this case, as it was in that of *Colchester*, that a standing order of the House has not equal authority with an act of parliament, and that the not complying with the former is not sufficient to deprive a member of his seat. But the answer to such an argument will be, that in matters relating to returns, the House of Commons has always exercised exclusive and absolute authority independently

* See the order, *ante*, p. 6. † 1 Lud. 415, 425.

of the other branches of the legislature. Questions of election were disposed of by the House before any act of parliament had passed to invest the House with such authority. This argument was taken in the case of *Colchester*, but did not prevail. That case has not been over-ruled, and is conclusive of the present question.

Mr. *Follett*, for the sitting member:—It is a well established rule, that it is incumbent on parties objecting to the qualification of a sitting member to show that the qualification is insufficient; and that the qualification must be taken to be good until the contrary be proved. This principle was distinctly recognised and acted upon in the cases of *Coventry** and *Lincoln*† of this session. And the rule is founded in justice and good sense, for otherwise the qualification of every member of the House might be called in question on merely speculative grounds, and the title deeds of their estates be produced for the inspection of lawyers and conveyancers. It is known that titles have been questioned and estates lost in consequence of defects discovered by the accidental production of deeds.‡

But it is said that, because the sitting member now relies on a different qualification from that on which he relied at the poll, and because he has not complied with the standing orders of the House, the general rule is to be departed from. It will be shown that both these grounds of objection are untenable.

It is idle to contend, that because the sitting member has sworn to one qualification at the poll, and now thinks proper to rely on a different one, this is an admission that the first qualification was invalid. A candidate is not bound to include all his property in the oath taken at the poll; he may rest his qualification at the

* *Ante*, p. 284.

† *Ante*, p. 372.

‡ See the observations of Lord Eldon in *Cock* v. *St. Bartholomew's Hospital, Chatham*, 8 Ves. 141.

poll on one part, and may afterwards, in his statement of particulars to the House, or, as in this case, on the hearing of the petition, rely on another. Suppose that in the interim he should alienate or incumber the property sworn to at the poll, can it be contended that he would be bound to rest his qualification on that particular estate, though he might have abundant other property to enable him to make out his qualification? But it is sufficient to observe, that the standing order does not require that the qualification should be the same as that sworn to at the hustings. It leaves it perfectly open to the sitting member to substitute a different one. The inference, therefore, drawn by the petitioners from the sitting member having substituted a different qualification cannot be sustained, and the qualification sworn to at the poll must be taken to be good, inasmuch as the petitioners have produced no evidence which has been able to impeach it.

The objection that the oath was not properly taken, because the property was described as in the town of Warwick, instead of in the parishes into which the town is divided, is altogether frivolous. It cannot seriously be contended that a member is to lose his seat on such a ground. Moreover, the statute uses the word "township," as well as "parish," and the former word will apply in this case, for wherever constables are appointed for a town, it is a township. And the oath is described to be "in the form or to the effect following:" this shows that all that was intended was, that it should be pointed out generally where the property was situate.

The main objection relied on by the other side is, that the sitting member has delivered in no statement of particulars to the House. It is contended that he has thereby forfeited his seat. The case of *Colchester* is relied on by the other side, but that case is one of very questionable authority; it is unsupported by any other similar decision, and is at variance with the current of later authorities. The case of *Great Grimsby* is an

authority on the other side. By the standing order of 1717* it is provided, "that if any sitting member shall think fit to question the qualification of a petitioner, he shall, within fifteen days after the petition read, leave notice thereof in writing with the clerk of the House of Commons; and the petitioner shall, in such case, within fifteen days after such notice, leave with the said clerk of the House the like account in writing of his qualification, as is required from a sitting member." In the case just referred to, the petitioner had not delivered in a particular, but the House decided that he was entitled to petition, and he eventually obtained the seat.† It is impossible to contend as a point of constitutional law, that the common law rights of the subjects of the realm can be taken away otherwise than by an express act of parliament. Every person had at common law a right to sit in parliament if duly elected; and every constituency, returning members to parliament, had an undoubted right to return such persons to represent them as they thought proper. This right has been modified, it is true, by enactments of the

* See the order, *ante*, p. 6.

† The case referred to hardly goes the length contended for in the argument. The facts are as follows:—A petition having been presented against the return for Great Grimsby, in 1808, a motion was made in the House by Mr. Horner, to discharge the order for taking the petition into consideration, on the ground that the petitioner (Mr. Lofft) had neglected to comply with the standing order, by delivering in a statement of his qualification within fifteen days after notice. The solicitor-general (Sir Thomas Plumer) contended that, though this course was in accordance with the practice of the House prior to the passing of the Grenville Act, yet since the enactment of that statute, which transferred all jurisdiction in matters of controverted elections from the House to the Committees chosen under it, it was not competent to the House to discharge any order for a committee to determine the merits of an election, in any other manner than as prescribed by the act. The whole jurisdiction rested with the committee, which alone was to decide upon the question respecting the qualification; and, therefore, the House could not have the power to discharge the order pursuant to the motion of the honourable gentleman. The motion was negatived. *Hansard's Parl. Deb.* vol. x., p. 698. The question does not appear to have been raised by the counsel for the sitting member before the committee. *Minutes*, Feb. 24, 1808.

legislature, but the restriction cannot be carried beyond the express letter of the statute. Now the statute requires that a party elected shall be possessed of a certain qualification; the necessity for delivering in the particulars of the qualification, if questioned, forms no part of the statutory enactment, but is imposed by a mere regulation of the House of Commons. It would be wholly out of the question to contend, that an order of one branch of the legislature can be of equal efficacy with an act of parliament; and as the right of the subject cannot be taken away, except by act of parliament, it follows that a non-compliance with the standing order, though it may render the sitting member amenable to the House for the consequences of his disobedience, cannot affect his right to the seat, or the right of the constituency to return him.

This is indeed the view of the case which has been taken by the highest authorities of the House of Commons, and adopted by the House itself. The sitting member having omitted, under the pressure of domestic distress, to deliver in the particulars of his qualification, moved the House to enlarge the time within which the standing order might be complied with. The application was, however, refused on the ground that the question was one between the sitting member and the House, which could not affect the right of the sitting member to the seat, while it remained open to the petitioners, if they sustained any injury from the breach of the regulation of the House, to apply for such relief as the circumstances might call for. This view of the question was expressed by the Speaker and other influential members,* and was acquiesced in by the House. These opinions may not be binding on the Committee, but they are unquestionably entitled to the most attentive consideration; and they are in perfect

* The speeches referred to were read by Mr. Follett. It was objected that he had no right to avail himself of matter not in evidence before the Committee; but the chairman declared his opinion that Mr. Follett might read them as part of his speech. See *post*, note (A.)

accordance with the soundest principles of constitutional law.

It has been suggested that if the Committee should be of opinion that the non-compliance with the standing order be not fatal to the seat, the sitting member should, under the circumstances of the case, be called upon, contrary to the general practice, to prove his qualification, or further time should be allowed to the petitioners to make out their case against the qualification. But there is nothing whatsoever to take this case out of the general rule. The petitioners might have applied to the House of Commons to compel the sitting member to deliver in the particulars after the time appointed, but they have neglected to do so. A week ago, the sitting member delivered to the petitioners a statement of the qualification on which he meant to rely. They have made inquiries at Warwick even after the qualification was stated to them to be in Kent. They have had an opportunity of examining the grantor of one of the rent charges as to the validity of that part of the qualification, but they have omitted to do so.* It is obvious, therefore, that they have in reality no valid grounds of objection to the qualification.

The simple question, therefore, which remains for the Committee to decide is, whether the petitioners have done any thing to impeach the qualification of the sitting member, which, in the absence of negative proof, must, according to the well-established principle, be taken to be good. It is clear that the petitioners have offered no such proof, and the sitting member must, therefore, be determined to be entitled to the seat.

The Committee resolved, "That John Halcomb, Esq. was duly elected, and that neither the petition nor the opposition to it were frivolous or vexatious."

* Mr. Knocker, the grantor of one of the rent charges, being the returning officer of Dover, had been called to prove the poll.

NOTE.

(A.) The following are the speeches referred to in Mr. Follett's argument, *ante*, p. 486 :—

Mr. *George Lamb* :—In refusing the time the sitting member asks for, we should be doing him great benefit and the petitioners great injury. The standing order is a rule which the House has power to enforce or not upon its own members, and supposing the honourable and learned member for Dover does not deliver in the particulars of his estate, he will not thereby lose his seat. In fact, it has been almost a blunder of the sitting member to take the course he has done, for if we refuse him the time he asks, or if he had not asked it, the only result would be (if the petitioners did not apply to this House) that the Committee would have to decide upon the important point of his qualification, without the particulars concerning it having been examined by the parties interested.

Mr. *Charles Wynn* :—It must be remembered that the question rests upon a standing order of the House, and that a standing order of the House cannot bind a committee appointed under an act of parliament. What will be the consequence of our refusing this application? Why, that the petitioners will have to go before the committee without having had the advantage of inspecting the particulars of the estate of the sitting member. I am not, therefore, inclined to grant this indulgence to the sitting member, but seeing that the committee will examine into his qulification, without regard to his having complied with the standing orders of the House, I am inclined to allow this indulgence for the sake of the petitioners, who will otherwise be placed in a situation of disadvantage. It is altogether a difficult question, but it cannot be conceded that the non compliance with the standing order will deprive the member of his seat, to which he has been legally elected, and to which he is by law entitled, supposing that he makes out his qualification. If I were a member of the Committee, I know that I should at once enter into the determination of that question under the act of parliament, without regard to the standing order. As this would place the petitioners in a situation of disadvantage, I feel disposed to accede to the proposition.

The Speaker :—Having been called upon to deliver my opinion upon the point in discussion, I should say that the non-compliance with the standing order by the sitting member is a question between him and the House. A petition having been presented complaining of his return, upon the ground of his not being qualified, the act of parliament has provided how that petition shall be inquired into, and the case dealt with. Whatever may be the decision of the House to-night, that petition must go before the committee. The committee having been duly balloted for, will be sworn to try the merits of the petition, and will form its judgment upon the result of that investigation. The question it will have to decide will be, qualification or no qualification at the time the sitting member was returned? Whatever may be the result of that decision, it appears to me that it will not be governed by the sitting member's compliance or non-compliance with the standing orders not referred to by the act of parliament under which the committee is appointed. If the petitioners on that inquiry should feel that they are prejudiced by the sitting member's non-compliance with the standing orders, shall feel that they have not had the facilities afforded them which the standing orders intended should be granted them, and should call upon the committee for relief, it will certainly be a most difficult point for the committee to decide how they shall act in the obscurity in which they are involved, but still it will be a question for it to decide. The whole question, therefore, appears to me to turn upon this, whether as the petition must go before the committee, granting the permission now asked will prejudice or benefit the petitioners before the committee. *Mirror of Parliament*, April 19, 1833, pp. 1341, 2.

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CASE XXV.

BOROUGH OF COLERAINE.

The Committee was chosen on the 7th of May, 1833, and consisted of the following members.

John Hardy, Esq. (Chairman), *Bradford.*

Joseph S. Brotherton, Esq. *Salford.*	Ralph Thicknesse, Esq. *Wigan.*
Viscount Sandon, *Liverpool.*	W. Fawkener Chetwynd, Esq. *Stafford.*
Samuel Irton, Esq. *Cumberland, West.*	Sir Stephen R. Glynne, Bart. *Flintshire.*
Jasper Parrott, Esq. *Totness.*	W. R. Carter Chaytor, Esq. *Durham City.*
*Joseph Pease, Esq. *Durham, North.*	Roderick Macleod, Esq. *Sunderland County.*

Petitioner—William Taylor Copeland, Esq. Alderman.

Sitting Member—Vice Admiral Sir John Poo Beresford, Bart.

Counsel for the Petitioner—Mr. Harrison, Hon. C. E. Law, and Mr. Thesiger.

Agents—Messrs. Brundrett, Spinks and Brundrett.

Counsel for the Electors, defending the return—Mr. Serj. Merewether, Mr. Follett and Mr. Hildyard.

Counsel for the Returning Officer—Mr. Alexander.

Agents—Messrs. Farrars.

The petition. THE petition in this case was that of William Taylor Copeland, Esq., alderman of the city of London, and it stated, that at the last election for the borough of Coleraine, the petitioner and Vice-admiral Sir John Poo

* The affirmation of Mr. Pease, he being a Quaker, was, after some debate, substituted for the oath required by 9 Geo. 4, c. 22. See *Mirror of Parliament*, pp. 1654, 1655.

Beresford, bart., were candidates; that the precept sent by the sheriffs of the city and county of Londonderry, for holding this election, arrived at Coleraine during the night of Thursday, the 6th day of December last, at which time Richard Hunter, Esq., the mayor and returning officer of the said borough, was many miles distant therefrom; that the said Richard Hunter did not return again till the afternoon of Friday, the 7th of December; that, notwithstanding the absence of the said returning officer, as early as nine o'clock on the morning of the said Friday, the 7th of December, a printed notice was affixed to the door of the town hall, announcing that the election for the said borough would take place at ten o'clock on the morning of the then following Tuesday, the 11th of December, and that no notice of holding such election, under the hand of the said returning officer, was affixed in the usual public place in such borough, four days at the least preceding the day of such election, as required by the statute in such case made and provided; that a written protest was in consequence delivered to the said returning officer by the agent for the petitioner, but that the said Richard Hunter did, nevertheless, illegally proceed to the election, and returned the said Sir John Poo Beresford as having been duly elected a burgess for the said borough of Coleraine.* It then proceeded to allege that at the election several persons, being freemen of the said borough, and having claimed to be registered as voters for such borough, but who had been refused permission to be registered by the registering barrister, and who were entitled to be registered as voters for such borough and to vote at such election, tendered and offered their votes

That no notice for holding the election was posted under the hand of the returning officer, as by law required.

* No proceedings were taken upon these allegations against the mayor. The law touching the returning officer and his right to appear by counsel, will be found in the *Colchester*, *Tewkesbury*, and *Great Grimsby cases*, 1 Peck. pp. 504, 146, 77; and in the *Knaresborough* and *Middlesex*, 2 Peck. pp. 282, 11. See also the *Nottingham case*, 1 Peck. pref. 46, and the 9 Geo. 4, c. 22, s. 36.

in favour of the petitioner, but that the deputy returning officer rejected such votes, and declined to receive them as tendered votes for the petitioner, but, on the other hand, received the votes of persons on the poll in favour of Sir John Poo Beresford, who had no right to vote at the said election; that, by means of the rejection of such votes so tendered and offered for the petitioner, and by the admission of such illegal votes for the said Sir John Poo Beresford, the number of votes at the close of the poll given for the said Sir John Poo Beresford and the petitioner was equal, and that the said Richard Hunter thereupon gave his casting voice in favour of the said Sir John Poo Beresford, who thereby obtained a colourable majority over the petitioner of one vote, and was consequently returned duly elected, whereas the majority of legal votes was in truth and in fact for the petitioner, who ought to have been returned accordingly. Then followed the prayer of the petition, "That the House would take the premises into its consideration; that the said Sir John Poo Beresford might be declared not duly elected, and that the petitioner might be declared to have been duly elected, and that his name might be thereupon substituted for that of the said Sir John Poo Beresford, or that the election might be pronounced null and void."

That the returning officer had refused to receive the tendered votes of certain freemen, whose claim had been rejected by the revising barrister.

Prayer.

In this case the sitting member had, after an ineffectual application to the House to put off the time for proceeding upon this petition, abandoned his seat: whereupon certain of the electors petitioned to be let in to defend the return, and now appeared accordingly.* The nature of the general right of voting in the borough being called in question, statements of that right were according to parliamentary practice put in by each party respectively.

Electors admitted to defend the return.

The statement by the petitioner was as follows:— "That all the freemen of the corporation of Coleraine were, previously to the Irish Reform Act, legally en-

Statements of the right of voting in Coleraine.

* Under 9 Geo. 4, c. 22, s. 12.

titled to vote in the election of members to serve in parliament for the borough aforesaid, and that since the said act all the said freemen, (subject to the provisions of the act 1 & 2 W. 4, c. 88, as to residence and registry), and also all other persons qualified under the said act, are now legally entitled to vote at the election of members for the said borough."

The statement put in by the electors, who defended the return, was in these words,—"That the right of voting in the borough of Coleraine, before the passing of the Irish Reform Act, was in the mayor, the twelve aldermen, and the twenty-four burgesses only."

The petitioners' case.

Mr. *Harrison*, in opening the case for the petitioners, stated that two questions would probably arise in the course of the investigation: first, whether, under the charter of the 11th of James the First, incorporating the town of Coleraine, freemen were severally entitled to vote in the election of burgesses to serve in parliament for that borough; and, supposing that point established, secondly, whether certain individuals, who had been elected freemen in 1797, but whose right, it would on the other side be contended, had not been perfected until October, 1831, were or were not, under those special circumstances, entitled to vote at the late election.

The first matter, therefore, which would engage the attention of the Committee, would be the circumstances under which the charter in question was granted by King James to the town of Coleraine and the effect of that charter itself. The rebellion of the great O'Neil, Earl of Tyrone, and the consequent forfeiture to the crown of his extensive estates, in the latter part of the reign of Elizabeth, was well known to have first given rise to the Protestant colonization of the province of Ulster. In effecting this great object the trading companies of the city of London were chiefly instrumental, and it was with this view that extensive grants of land were made to them by the crown, and that a superintending

body, in pursuance of the design, was further incorporated from amongst the citizens of London by the name of the Irish Society.* The two towns in Ireland, which were especially marked out as the principal places in the colony, were Londonderry and Coleraine, and to each of those places charters, essentially similar in character, were granted under similar circumstances, and with a view to the same objects, a point which it might be material hereafter to bear in mind. What those objects were would better appear from the language of the charter of Coleraine itself, to which he should accordingly refer.

An office copy of the charter, from the Roll office, Dublin, and a translation of it by Mr. Schultes, secretary to the Irish Society, were then put in and proved. The passages which principally bore on the present case were the following:—After reciting the then unsettled and uncivilized condition of the province of Ulster, and the intentions of the king to reclaim the same "from superstition, rebellion, calamity, and poverty, to religion, obedience, strength, and prosperity," and stating, that the mayor, commonalty, and citizens of London, had undertaken a considerable part of the said plantation in Ulster, and were making progress therein, it proceeded to constitute Coleraine a free town, and that its boundaries and jurisdiction should extend for a space and circuit of three Irish miles, to be measured every way from the middle of the town. Next came the clause of incorporation, and there were also two distinct clauses, providing severally for the election of burgesses to serve in parliament, and for the election of certain guilds, both of them material to the present case. The whole as follows: — Charter, 11 James I.

"And we do will, grant, appoint, ordain, and create, Incorporation clause.

* For a more detailed account of the colonization of Ulster, see Harris's Hibernica, p. 105; also the Harleian MSS., vol. iii., No. 7009, p. 63; Ibid. No. 292, p. 175, A. D. 1609; Leland's History of Ireland, vol. ii. p. 432; and the History and Proceedings of the Irish Society, printed by order of the Court, by Arthur Taylor, 39, Coleman Street, 1832.

that all the inhabitants of the aforesaid town of Coleraine, and all inhabitants within the jurisdiction and liberty of the same town of Coleraine, and *those who hereafter shall be inhabitants* of the town aforesaid, or inhabitants within the jurisdiction and liberty of the same town of Coleraine, and their successors from henceforth for ever, shall and may be, by force of these presents, a new body corporate and politic, in deed, fact, and name, by the name of the mayor, and aldermen, and burgesses of the town of Coleraine, within the province of Ulster, in the kingdom of Ireland; and them by the name of mayor, aldermen, and burgesses of the town of Coleraine, within the province of Ulster, in the kingdom of Ireland, a new body corporate and politic, in deed, fact and name, really and fully, for us, our heirs and successors do erect, make, ordain, constitute, create, and declare, by these presents. And that by the same name they shall have perpetual succession, with the usual powers of holding lands and of pleading and being impleaded by that name, and of having a common seal.

Power to return burgesses to parliament.

"And further, of our more abundant special grace, we will, and by these presents, for us, our heirs, and successors, do grant to the aforesaid mayor, aldermen, and burgesses of the town of Coleraine aforesaid, and their successors, and also, by these presents, we do ordain and establish for ever in future times, that there be, and shall be, in the said town of Coleraine, two burgesses of the parliament of us, our heirs, and successors; and that the mayor, aldermen, and burgesses of the town aforesaid, and their successors, by virtue of any precept, mandate, or process, upon the writ of us, our heirs, and successors, for the election of the burgesses of the parliament in that behalf duly directed, may and shall have power, authority, and faculty to choose and nominate two of the more discreet and sufficient freemen of the said town of Coleraine for the time being to become burgesses of the parliament of

us, our heirs, and successors, for the same town and liberty of the same; and the same burgesses so elected, at the costs and charges of the said mayor, aldermen, and burgesses of the town of Coleraine aforesaid, and their successors for the time being, to send to the parliament of us, our heirs, and successors, wheresoever it shall be then holden, in the same manner and form as in other cities, boroughs, or towns, of our realm of Ireland is used and accustomed; which said burgesses, so elected and nominated, we will to be present and continue at the parliament of us, our heirs, and successors, at the costs and charges of the said mayor, aldermen, and burgesses of the town aforesaid for the time being, during the time that such parliament shall happen to be holden, in the like manner and form as other burgesses for the parliament for any other places, cities, boroughs, or towns within our realm of Ireland, do or have accustomed or ought to do.

Erection of guilds, &c.

"And further, &c., for us, our heirs, and successors we do grant to the aforesaid mayor, aldermen, and burgesses of the town of Coleraine aforesaid, and their successors, that, for the greater increase of all and all manner of arts, mysteries, and manual occupations whatsoever, within the aforesaid town of Coleraine, the liberty and precincts of the same, and for reducing the same into better order and perfection, such and so many of the mayor, aldermen, and burgesses, and *other freemen* of the same town, and their successors, as do now use and exercise, or shall hereafter use or exercise any one art, mystery, or manual occupation, be from time to time for ever hereafter separated and divided by the mayor and aldermen of the town aforesaid, for the time being, or the greater part of them, into separate companies, guilds, or fraternities, of the same art."

The poll book of 1831 also was put in, shewing that the very votes now in dispute had been tendered then, and the following resolution of the Coleraine committee of 1831, was read by consent from the minutes:

Resolution of 1831.

Resolved, "That all the freemen of the corporation of Coleraine are legally entitled to vote in the election of members to serve in parliament for the town aforesaid." The printed copy likewise of the return of the commissioners appointed previously to the Reform Act, indorsed, "Returns relating to the corporation of the borough of Coleraine, 18th April, 1832," was likewise put in.

Petitioner's case continued.

Mr. *Harrison* then proceeded to state, that on the documents thus put in, would chiefly rest the general right of voting in the borough of Coleraine, as asserted by the petitioner, a right, it would be observed, which had been recognized and acted upon by the committee in 1831.

With respect to the freemen whose votes were now more especially in question, it would be in evidence that in 1797 the freedom of the town was conferred on certain members of a yeomanry corps, in all, one hundred and eleven, in consideration of their eminent services at that disturbed period. These individuals, it would be seen, had been duly and severally elected freemen at that time, and there having been no contested election for the borough from that day up to 1830, no question had until then arisen upon their right to vote. In that year it would appear that not only many of the inhabitants claimed to be admitted freemen, but these very yeomanry also claimed to be already entitled to exercise the franchise. Every offer was made at the time to procure stamps and take all oaths which might be necessary, and in fact all due diligence was exercised which could in any way be required from them in order to be put upon the poll as electors: the claim, nevertheless, was disallowed; but in consequence of an expected dissolution of parliament, no petition was prosecuted. In 1831, however, the same circumstances again occurred; the votes were again tendered, and then Mr. Alderman Copeland, having brought the question before a committee of the House, succeeded fully

in establishing their claims and securing his own seat. It yet remained to draw the attention of the Committee to the attempt which had been made in 1831, and which doubtless would be insisted on now to disqualify these voters. In the month of May of that year, a proposition was made, that they should all be required then to take certain oaths, the object being to date their admission from that period, and thus bring them within the section in the Reform Act, which provides, "that no honorary freeman, elected after the 1st of March, 1831, should thereafter be entitled to vote:" * with the same view it was then contended by the chamberlain of the borough, that it would be necessary that each of them should be provided with a 3*l.* stamp, the sum then payable for the admission of honorary freemen. This attempt was met as it deserved, the oaths were taken under protest; and as to the stamp, the opinion of the Attorney-general having been first obtained, upon the authority of that opinion a 5*s.* stamp alone was procured: the admission, it was contended, must be taken nunc pro tunc, and referred back to the time of the election in 1797, and under those circumstances, that sum and the proper penalty for affixing a stamp after the due time were alone paid. The purpose nevertheless of the objecting party in the corporation was so far answered, that it enabled them to bring the question on for argument before the barrister at the last registration. The case was accordingly heard by him, and, strange to say, although he was put in possession of the prior decision of the Committee, he persisted in rejecting votes which had not only been pronounced to be good votes before, but which had been actually returned as freemen by the commissioners appointed prior to the passing of the Reform Act. It would be contended probably, that this adjudication had been, in some measure, supported by the decision of an Irish judge upon appeal, but the

* 2 & 3 W. 4, c. 88, s. 9.

reasonable supposition was, that the facts could not have been there fully proved, in the manner in which they would be submitted to the Committee. These facts, at any rate, would now be fully established, and it would be shown further, that these voters thus rejected by the barrister, had, as a necessary consequence, been rejected also at the poll, from their being unable to produce the proper certificate of registration. The first case gone into would be that of Arthur Long, one of the freemen elected in 1797, and it would be then for the Committee to establish by their decision, the principle which would consequently determine the issue of this petition.

The case of Arthur Long.

The register was then put in, and from it the name of Arthur Long was read, with the decision of the registering barrister, that he was rejected because evidence was adduced that the stamp duty on his admission was insufficient, and because he was an honorary freeman, admitted since the 30th of March, 1831; there were sixteen others rejected on the same ground. It was then proved that the whole seventeen were inhabitants of Coleraine or of the liberty; and that a stamp duty of *5s.*, with a penalty of the same amount, had been paid by each. Out of this number fourteen had tendered their votes for the petitioner at the election; but not being able to produce any certificate of registration, they were upon that ground rejected by the returning officer. The following entries were also read from the register:—"Henry Richardson, claiming by corporate right as a burgess of Coleraine; Henry O'Hara, as a resident burgess; Thomas Bennett, burgess of the borough of Coleraine; Samuel Knox, resident freeman;* Sir James Robinson Bryce, bart., resident freeman; the Rev. Thomas Richardson, clerk, resident freeman; Richard Hunter, esq., (the mayor,) resident freeman."

* In the barrister's list this voter appeared as "householder."

Mr. *Follett* upon this took a preliminary objection to the entertaining of any question at all upon the vote of Arthur Long, alleging that the Irish Reform Act had made the register conclusive in all cases, save those of personal incapacity, excepted by section 59, and consequently that the Committee had no jurisdiction upon this point. The decisions arrived at in the *Longford* and *Galway Town* committees were come to, he contended, upon a different state of facts. There it had been proposed to strike off from the poll voters whose right could not be substantiated; here it was sought to put upon the poll the names of individuals whose claim had been fully investigated below before the revising barrister, and, after much deliberation, been by him rejected. But the act, it would be observed, by the 13th section, expressly provided, that "no one should be admitted to vote unless he should have been qualified as aforesaid and duly registered." Now amongst the persons so to be qualified were freemen, and it would be remarked, that the condition of registration thus superadded was in their case imposed for the first time by this act. No such condition applied to them heretofore. Still as it had been imposed it was conclusive, and without registration as a freeman, Arthur Long was not in a condition to claim to be put upon the poll. The English act did give a party whose vote had been so rejected by the barrister, an opportunity of tendering himself at the election and of bringing subsequently the question before a committee;* but by the Irish act no such power was given: on the contrary, an additional appeal below was there introduced, namely, to a judge of assize, and as it was an especial object of that act to diminish expense, which in Irish cases was most formidable, it might be well intended that the legislature never did intend that a question similar to the present should ever be raised in committee. The learned coun-

Preliminary argument on the jurisdiction.

* 2 W. 4, c. 45, s. 59, 60.

[illegible] the argument [illegible] *Ex parte* [illegible] [illegible] that the [illegible] [illegible] to [illegible].

[illegible] [illegible] [illegible] the objection. [illegible] [illegible] [illegible] from the [illegible] of Gren[illegible] [illegible] given in the argument in the [illegible] [illegible] [illegible] the cases of Ban[illegible], [illegible], [illegible] — to prove [illegible] [illegible] [illegible]

gested that the 10 G. 4, c. 8, was, in many of its provisions, almost similar to the Reform Act; that the certificate was there also made conclusive, but that it had always been held to be in that case conclusive upon the returning officer alone, and that the jurisdiction of committees had never been disputed on that ground.

Upon this argument Mr. *Harrison* also relied, urging likewise, that the words in the act, "diminish the expenses of the election," related solely to the expenses previous to and arising at the poll, and not to a necessary inquiry before a committee. In conclusion, he cited the 55th section of the Irish Act, which saves all laws, statutes, and usages not repealed or altered by its enactments, and pressing upon the Committee the arguments in *Foster's case*,* in *Ex-parte Lowe* and *Ex-parte Benson*,† and in *The Attorney-General* v. *The Mayor of Dublin*,‡ insisted upon the importance of maintaining the jurisdiction.

Mr. *Follett*, in reply, contended that the preface to *Glanville* and the early authorities only showed the rigour with which the House had vindicated its privileges against the crown, and the courts of law; but in later days, the parliament had been, with greater reason, more anxious to provide that its power in election matters should not be abused by itself. The Grenville act was an evidence of this; for there the House unquestionably having a full right to examine into all the details of each case itself, had, nevertheless, in order more effectually to secure an impartial and just decision, delegated that power entirely to committees. So here the question, he submitted, was, not, whether the House had not once the jurisdiction which had been claimed for it on the other side, but whether it had not voluntarily, by its own enactments, limited that jurisdiction, in order to save the endless expense of recommencing

* 11 Coke, 56, B.
† 1 Deacon & Chitty, 333.
‡ 1 Bligh, N. S. 335, 358.

the whole inquiry into each vote, which had been or might have been already sifted at the registration.*

A committee has power to put on the poll, in an Irish case, the name of a voter who had claimed, but had been rejected before the barrister.

The Committee resolved, "That they had jurisdiction in the case, and might put on the poll the name of Arthur Long, he having made his claim before the registering barrister, and been by him rejected, provided he should satisfy the Committee that he was qualified to vote at the election."

The Committee then went into further evidence on the right of voting.

Further evidence in Long's case.

Mr. John Boyd, the chamberlain of Coleraine and a burgess, produced the acts of the corporation, containing the acts of that body from December, 1792, down to the present time. The following extract from the book, dated Monday, the 2nd of October, 1797, was then read:—"At a court of common council, held this day in the town-hall of Coleraine, pursuant to public notice for that purpose, the Rev. Robert Haslett, elected mayor, and E. A. M'Naghten, an alderman. Present, James Thompson, mayor, and twenty others of the corporation, named in the book. The Right Hon. Sir John Beresford proposed, that the thanks of this corporation be given to Marcus Hill and Hugh Lyle, esqrs., and the corps under their command, for their spirited exertions, by which the peace of this town and neighbourhood has been so perfectly preserved, and for the attachment they have manifested to their king and constitution; and that such of the said corps as have not already been made freemen of this corporation be made freemen thereof, viz., Lieut. Mark Ker O'Neill, &c., (one hundred and eleven names, among which were those of Arthur Long and thirteen others, whose right to vote was ultimately established by the present Com-

* Other topics were also urged in this reply, arising from the distinctions to be observed between the provisions of the English, Scotch, and Irish act, but as they are all given in the *Galway Town case*, *ante*, p. 398, &c., it has been thought unnecessary to repeat them here.

mittee,) and the question being put, they were severally duly and unanimously elected freemen of this corporation. Signed, (by order)

CONNOLLY M'CAUSLAND, Chamberlain."

The following entries were also read:—" 12th Aug., 1830. At a court of common council held this day, Sir John William Head Brydges was admitted a freeman of this corporation. The petitions of divers persons claiming to be freemen of this corporation being presented, it was resolved, 'that the same be taken into consideration;' and a resolution, '1st October, 1830, that the said claims are inadmissible.'"

From the cross-examination of this witness, it further appeared that the corporation was reputed to consist of a mayor, twelve aldermen and twenty-four burgesses; that there were also freemen, but that he had never known any claim made by them to vote until at and after the election in 1830, from 1797. Up to that time, however, it was admitted that there had been no contest.

Mr. James Gibbon then proved that at the election on the 12th of August, 1830, Mr. Alderman Thorp and Sir J. Brydges were candidates; that he was himself present, and remembered that several persons then made application for admission to their freedom; adding, that they at the same time expressed their willingness to do what was necessary; that, amongst others, the freemen of 1797 made their claim to vote; that two of them proposed and seconded Mr. Alderman Thorp, and that the mayor directed the names to be taken down as tendered votes; that the select corporate body voted for Sir J. Brydges, and the freemen for Mr. Aldermen Thorp. That at a meeting of the common council, held previously on the same day, the freemen of 1797 claimed as freemen to take part in the proceedings, and to assist in filling up the vacancies at the election of burgesses; that the mayor, chamberlain, and others, disputed their right to be present, and that Mr. Alderman Hill said

[illegible] "If they [illegible] the [illegible], the police must be [illegible]" upon which they retired, it being understood that they should be re-admitted before the termination of the meeting; that on the same day, at the election, Mr. the witness "as agent for the whole of the freemen of [illegible]" together with George Macaulay and Thomas Lamb, two of the same body, claimed the right as freemen to vote for a burgess to serve in parliament; and that two inhabitant householders of Coleraine also claimed as freemen, though not in the books, to exercise the same right. It appeared, however, that no evidence of the due diligence had been exercised by the freemen in August, 1830, was adduced before the revising barrister, although the argument before him touching the right claimed by these parties had continued for two whole days; but the fact that they had been all actually admitted, though under protest, after March, 1831, seemed chiefly to have influenced his decision.

It having been first shown that Londonderry and Coleraine were admitted to the same source for their corporate rights, and that they were both, as to their bye-laws, subject to a similar control by the Irish Society, an extract from the charter of Londonderry was read, by consent, from the printed account of the "proceedings of the Irish Society;"* from this document it appeared that "all citizens, inhabitants of the city, and they who hereafter should be citizens and inhabitants of the said city, and their successors," were incorporated "by the name of the mayor, commonalty, and citizens of the city of Londonderry;"† and it was then proved by the chamberlain of Londonderry, who had been present at various elections for that place, that the

* Printed by order of the court, by Arthur Taylor, 39, Coleman-street, 1832.

† This charter bears date of the 14th Charles II., but recites and refers to a previous charter of the 11th James I., being the same date as that of the charter of Coleraine.

mayor, aldermen, burgesses, and freemen, had always voted, and not the select body alone.

On the part of the electors defending the seat, certain writs and returns for the years 1661, 1666, 1685, 1713 and 1715, and from that time down to the Union, were put in. The return for the year 1661 proved to be made by the mayor, aldermen, burgesses, and freemen, though the precept was directed to the mayor, aldermen, and burgesses alone. In the other cases, the returns were by the mayor, aldermen, and burgesses. Petitions presented in the years 1713, 1727, and 1728, were read from the Journals of the Irish House of Commons, which described the election to be in the mayor, aldermen and burgesses. A notice was proved to have been received from Mr. Farrers, Mr. Alderman Copeland's agent, stating that there would be heard at the assizes an appeal from the barrister's decision, on the cases of three of the yeomanry freemen, namely, of George Macfadden, James Ewing, and William Jackson. It was also stated by Mr. M'Naughten, himself one of the yeomanry freemen, but at the same time an alderman of Coleraine, and a 10*l.* householder, that he had never heard, until the year 1831, of any individuals claiming to vote save the members of the select body. Upon this evidence Mr. *Harrison* contended that the right of Arthur Long to vote at the last election was fully made out, leaving it to the counsel for the electors defending the seat to impugn the case as thus established.

Argument against the vote.

Mr. Serjeant *Merewether* and Mr. *Follett* were then heard against the vote.

The right of Arthur Long has been asserted to rest on two grounds: first, that the freemen of Coleraine are entitled to vote in the election of members for that borough; secondly, that Arthur Long was elected a freeman at such a period, and had used such due diligence since to complete his franchise, as not to fall within the provision of the Reform Act, which excludes from voting honorary freemen created since the 1st of March, 1831.

First:—In support of the first and general proposition, that the ancient right of voting in Coleraine extended to the freemen, the charter has been produced and much importance has been attached to the clause of incorporation, which provides "that all inhabitants, and all who thereafter should be inhabitants of the town of Coleraine, or inhabitants within the jurisdiction thereof, and their successors thenceforth for ever, should be a new body politic and corporate, by the name of the mayor, and aldermen, and burgesses of the town of Coleraine." It must be borne in mind, however, that words so extensive as these are of not unfrequent occurrence in old charters. All the decisions show that the interpretation put upon such documents has been almost invariably very much limited and modified. A well recognized principle in the construction of such charters is this—namely, that where the crown intends to constitute a municipal government, for the benefit of a particular community, the projected benefit to the inhabitants is first recited, and then a grant is made, but for the purpose, nevertheless, of securing the perpetual enjoyment of the contemplated benefits, a select body is also established for the purpose of preserving a perpetual succession. There is indeed upon record an instance of a grant of land to inhabitants generally, without any mention of a specific body, but as a rent was there reserved, "in order that the king might not be defrauded of his rent," that was held to be a case of quasi incorporation.* But with this exception the principle will be found to hold good universally, that no grant can be supported which is to an unlimited and undefined body. Now that position which may be thus laid down as true generally, has been recognised and acted on in many particular instances; but the principle of limitation has been most strongly exemplified in a variety of cases which have come before parliament. In the

* Cro. Eliz. 35, 363; 4 Inst. 297; Dyer, 100.

*Rye case** a prior decision in favour of the inhabitants was reversed upon appeal, and the right of election confined to the mayor, jurats, and the freemen inhabitants paying scot and lot, and duly admitted and sworn: the *Dungannon*,† *West Looe*,‡ and *Truro cases*,§ establish the same principle. In the *Portsmouth case*,‖ the right was alleged to be in the mayor, aldermen, and burgesses being resident within the borough and the limits and liberties thereof; it was found to be in the mayor, aldermen, and burgesses of the said borough only; and in the *Carlow case*¶ the right claimed for the freemen generally, was not only confined to the "sovereign and free burgesses," but there was a strong inclination to vote the petition frivolous and vexatious.

But without going further into these authorities, it may be remarked that a general claim to the right in respect of inhabitancy is somewhat inconsistent on the face of it with the specific claim now set up in respect of a qualified freedom; and upon a closer inspection of the details of the charter, it will sufficiently appear, that neither the one nor the other of these claims has any substantial foundation in fact. On reference to various subsequent clauses,** it will be seen that separate and distinct classes of the newly

* 85 Journ. 429; 86 Journ. 190. The first committee had found that there was a custom in Rye to admit every stranger, who had inhabited and dwelt there a year and a day, who had occupied some honest craft, and was of good guiding and conversation, and desired the franchise.

† Hudson on the Elective Franchise in Ireland, p. 41.

‡ 3 B. & C. 677. See also the case before the committee, printed by Mr. Serjeant Merewether, 1823.

§ Minutes, Feb. 1831; 86 Journ. 265.

‖ 76 Journ. 346. In this borough the inhabitants also claimed an exemption from toll by charter, which toll was payable to the select body: but the decision was against them. So also in the *Borough of Truro*, a similar exemption was claimed with the same result, 8 Bing. 275.

¶ 86 Journ. 273. See also the *Wigan case*, 86 Journ. 273; *Calne*, 86 Journ. 136; *Marlborough*, ib. 137; *St. Mawes*, ib. 180.

** See the several clauses touching the first incorporation of the guilds, the payment of scot and lot, forfeiture of goods by persons "not of the freedom of Coleraine, &c. &c." Proceedings of the Irish Society, p. 137, 139, et seq.

formed community are distinctly recognized, namely, the mayor, aldermen, burgesses, freemen and inhabitants. The first mayor, the twelve aldermen, the chamberlain and the twenty-four burgesses, are appointed by name, and they were to constitute the common council, and by that common council all bye-laws were to be created and enforced. As it was unquestionably therefore the policy of the then English government to strengthen its influence in Ireland through the instrumentality of such bodies as were created by this charter, it is but reasonable to suppose that the important duty of sending members to parliament would have been confided, by the crown especially and by preference, to those governing bodies in whom the chief municipal power was already invested. Who then composed this governing body in Coleraine? Undoubtedly the mayor, aldermen, and burgesses, and that only, as is provided by the charter, upon their having taken the oaths of allegiance and supremacy, which are universally required from common councilmen;* and in perfect consistence with this argument is the clause which relates to the election of members to parliament, which distinctly states that the "mayor, aldermen, and burgesses, shall have power, authority, and faculty, to choose and nominate two of the most sufficient freemen to that office." Now upon reference to other parts of the charter, that this grant was intended to include only the select body is obvious. In preceding clauses, where the whole corporate body is spoken of, the words which occur are "the mayor and burgesses," but here the expression is "mayor, aldermen, and burgesses;" the introduction of which second word is most material, as shewing the limitation. Yet it may be said that the word burgesses here employed, would at any rate include freemen: but the answer is this, that there is in this very clause a distinction clearly drawn between burgesses and freemen,

* Proceedings of the Irish Society, p. 140. See also *Rex* v. *Love*, 12 Mod. 601.

since the former are specified as the electors, and the latter are marked as the class whence the new members, the elected, are to be taken: a distinction further recognized in the clause for the formation of guilds, which runs thus, "the mayor, aldermen, burgesses, and *other freemen*:" *other*, because it was from that body also that the burgesses themselves were to be elected. The privileges and duties of the freemen, moreover, appear to be of a perfectly different character, for they are set out thus:—"that they may carry on trade, obtain exemption from toll, wharfage, &c., and that all of them, being willing to enjoy the liberties and free customs of the town, should be in scot and lot, and partake of all the charges for maintaining the state of the town and the liberty of the same."* But when the persons are named who are to pay the costs of returning the members for Coleraine, the words, "for the time being," are used; which expression occurs also in the clause appointing the twenty-four burgesses, evidently denoting and applicable to a select body, whose members come in by succession as vacancies occur. This interpretation too would be in accordance with the justice of the case, for the property was vested in them, and it was reasonable, therefore, that the expenses should fall on them also: a principle which has been fully recognized in the case of other common councils than that of Coleraine.†

Chairman:—The word "burgess" is used in different ways in different clauses; the select body are called "common council," where it is intended they shall exercise exclusive rights; in other cases, the grant is to the whole corporation; as in the clauses relating to the oath to be taken by the mayor, aldermen, and burgesses, to

* Proceedings of the Irish Society, pp. 162, 3.

† See The Mayor of Colchester *v.* Lowton, 1 Ves. & Bea. 226; and the Minutes of Evidence on the Northampton Corporation Committee, *Parl. Papers*, 1827, vol. iv., pp. 27, 28. See also the *Queenborough Case*.

the election of a burgess on a vacancy, and to the grant of freedom. In the clause giving the right of election, the words are, "the said mayor, aldermen, and burgesses *of the town* generally," not "the said mayor, aldermen, and burgesses." This appearing to be the case, is it not fair to adopt the supposition that the body would have been called "common council," had it been intended to confine the right to that body?

Mr. Serjeant *Merewether*. In answer to such a supposition, it will be well to bear in mind that the elective franchise is a right, which it was intended should be exercised by the voters individually and upon their own responsibility and discretion, and not collectively as the congregated members of a corporate body. Now such in effect would be the course of proceeding under the clause in question. As it now stands the members of the select body have in their power to act in their individual capacities, just in the same manner as in the election of a coroner, those who happen to be present voting singly as burgesses; but if, as is suggested, the words "common council" had occurred instead of the present expression, the election of a member of parliament, just like the election of a mayor, would have been rendered a corporate act, and could then only have taken place at a corporate meeting duly assembled. The language employed, therefore, seems not only entirely to meet the case, but to be peculiarly well adapted to the design, which it may well be conceived was entertained by the advisers of the crown in those days; namely, without making the election absolutely a corporate act, to vest the right, nevertheless, in those who by their personal influence and authority were in point of fact the most substantial and governing portion of the community.

Such then being the language of this charter, and such the interpretation which it is contended should prevail, it will be material next to consider how far that interpretation is borne out by the established usage in

the borough; for, wherever there is doubt as to the construction of a document, the manner in which it has been acted on for a long series of years is most material. In *The King* v. *Chester** the usage was proved to have been, with two exceptions, invariable for a century, and that was held to be sufficient to govern the construction of the charter. In the present instance consistent usage has been traced from a much earlier period, and with one solitary exception, the members appear to have been returned invariably by the mayor, aldermen and burgesses. The first return put in, which is that of 15 Charles I., A. D. 1639, purports to have been made by the mayor, aldermen, and burgesses, and from the year 1666 to the present time all the successive returns are signed by that select body alone. It is true that there is one intervening return of 1661, which bears the signatures of the mayor, aldermen, burgesses, and *freemen;* but an ample explanation of this circumstance will be found in the history of those times. It was just before this that the right of voting in England had been altered by Cromwell and vested in the inhabitant householders, and it was in this very year, 1661, that under colour of the act for purging corporations, which then passed, every species of irregularity in elections was practised in Ireland with impunity.† It is singular also that, although in this long series of years there were several contested elections, this point was never raised. The petition of 1713‡ alleged that there had been an undue election of aldermen and burgesses, but no pretence was then made that the right of election was vested in the freemen as well as in the select body. In 1727,§ although the petitioner, Mr. Jackson, would have suc-

* 1 M. & S. 101. See also *The King* v. *Sligo*, 2 Fox & Smith's Reports, 96.

† Leland's History of Ireland, vol. iii., p. 409.

‡ Journals of the Irish House of Commons, Dec. 1713, vol. ii. pp. 754, 5.

§ Ibid. Dec. 1727, vol. iii. p. 478.

ceeded, could the right of the select body have been shaken, the right of election was declared to be in the mayor, aldermen and burgesses, and the same statement occurs in the petition of 1728.* Now these facts were not put in evidence before the late committee in 1831; the case, therefore, as it is now presented, is much stronger, and it is confidently submitted, that not only upon the plain construction of the charter itself, but upon the further authority of the almost unbroken usage which establishes and confirms that construction, it is clear that the general right of voting in Coleraine is confined to the mayor, aldermen and burgesses.

But conceding, for the sake of argument, that the freemen also have a right to vote, the circumstances attending the election of Arthur Long are in themselves such as to disqualify him even in that capacity. And, first, it appears that these yeomanry freemen were all proposed in a body, and that the votes were given, not for them each individually, but for the whole collectively, which is in itself illegal.† In the next place, none of these voters were admitted, and no application was made for admission from 1797 to 1830; this, in any other proceeding, and before any other court than the present, would have been at once an effectual bar to the claim: "vigilantibus non dormientibus subvenit lex." Neglect, such as this, has in law been frequently held to operate as a waiver of the right. In *Rex* v. *Jordan*,‡ a case occurred where a burgess had not been sworn in till twenty-five years after his election. Lord Hardwicke in his judgment there observes, that "non-acceptance for so many years is sufficient evidence of refusal;" and that a mandamus for admission would not be granted. But the legislature has gone even further than this, since it passed a

* Journals of the Irish House of Commons, March, 1728, p. 553.

† See *Rex* v. *Monday*, Cowper, 530; *Rex* v. *Player*, 2 B. & A. 707; *Kilkenny case*, Hudson, p. 125; *Wexford case*, Ibid. 432.

‡ Cases temp. Hardw. 255.

species of statute of limitations against such dormant claims: the Irish Act, 33 Geo. 3, c. 38, s. 3, recites, "that, whereas by collusion with persons having the custody of corporation books, divers persons have obtained their names to be entered therein as burgesses or freemen, as if they had been duly elected, and such persons have never sued forth any writ of mandamus or otherwise applied to be sworn or admitted burgesses or freemen," and then enacts, "that no writ of mandamus shall issue for the admission of such burgess or freeman unless within seven years after the entry of his election." This act passed four years before the election of the freemen, and that being the case, it is obviously impossible that their right of admission could have been enforced.

Again, an admission of a freeman, in order to be valid, must be on a proper stamp; and here that formality has been neglected.* The stamp duty on the admission of freemen in 1797 was 5*s*., and that duty was payable upon the actual admission, not on the election of the freeman; the stamped entry of admission being only necessary when it was desirable to prove the right. The 56 Geo. 3, c. 56, however, repealed the former statutes, and the duty was raised to 1*l*. on admissions by reason of birth, servitude, or marriage, and to 3*l*. on all others. For an admission in 1831, therefore, this last was the proper stamp; but, with a view of rendering the claim consistent, a 5*s*. stamp has been here affixed to the admission. The Indemnity Act, however, does not admit, upon any plea, of a stamp of a lower denomination than that required by the law in force at the time of actually affixing the stamp. The admission, therefore, was in that respect also invalid.

But supposing it not to be liable to any such objections, still, as it did not take place until after March, 1831, the vote is upon that ground totally inadmissible.

* *Wexford case.* Hudson on the Elective Franchise, 431, 2.

The words of the Irish Reform Act are express, "no persons, who since the 13th day of March, 1831, have been or hereafter shall be admitted as honorary freemen, shall be entitled to vote or register as freemen under this act." Now in the preceding acts, 35 Geo. 3, c. 29, s. 29, and 4 Geo. 4, c. 55, s. 32, the words are, "admitted or elected, or admitted or granted," but here the act refers to admission alone, makes that the test, and then goes on in terms of exclusion the most unequivocal. The present case then falls completely within this principle: the act of taking the oath marks the period of admission:* that was in October, 1831; and being, moreover, an honorary freeman as a member of the yeomanry corps, he is precisely within the very words of the statute.

The importance to be attached to these two last objections may be inferred from what has taken place since the registration. Upon appeal from the barrister's decision, these two very questions were carried before Mr. Justice Moore, the judge of assize. A case was stated by him for the opinion of the twelve judges, and on the last point they were all agreed, whilst on the former, as to the sufficiency of the stamp, eleven out of the twelve were likewise against the voter. There is no pretence for saying that the appeal was collusive, for the point was not only argued, but argued by a gentleman who had himself attended at the registration for Mr. Alderman Copeland. The case, moreover, as then proved, was in every respect similar to the present, and as the certificate† of the learned judge

* *Williams* v. *Evans*, 8 T. R. 246. See also Wilcox on Municipal Corporations, pp. 219, 220, 226.

† An application was made to the Speaker for a summons for Mr. Justice Moore, which, after some hesitation, was granted; but the learned judge having been prevented by his circuit from attending, sent his certificate instead, which, however, was not admitted in evidence. See *post*, p. 524.

sent over expressly to be produced here is unequivocal and express, it is submitted that this, in connection with the other facts, must be held to be conclusive on this vote.

Mr. *Harrison* and the Hon. *C. E. Law*, for Mr. Alderman Copeland:— Argument in support of the vote.

The charters of Londonderry and Coleraine are very peculiar in their nature, and unlike most other documents of the kind. In the *Carlow* and other cases, which are said to have been abandoned in consequence of the decision of the *Rye* Committee,* the several charters were very distinguishable from that involved in the present discussion; not only the language, but the origin of these instruments differed most materially: in order, therefore, the more fully to illustrate the construction now contended for, it will be necessary, first, to revert again to the circumstances connected with the original incorporation of Coleraine.

The forfeiture of the large estates of the earl of Tyrone, in the north of Ireland, has been already alluded to, and it has been before stated that the Protestant colonization of the province of Ulster commenced about the beginning of the seventeenth century.† It has been seen likewise what considerable assistance was contributed on the occasion by the companies of London, and that the greater part of the colonists actually emigrated from that city. In 1813, in pursuance of the original project, this charter of Coleraine was granted, and, under the peculiar circumstances of the case, it is obvious that there was an intention on the part of the crown to conciliate the settlers by assimilating as much as possible the constitution of their new community to that of their parent city. Accordingly it was then provided that their court should be a court of record, and that their mode of choosing juries should

* *Ante*, p. 507. † *Ante*, p. 492.

be in all respects similar to that which prevailed in the city of London: the recorder was to be an Englishman, the town clerk was to be elected as in London, and the several officers of the corporation were to be amenable to the Irish Society, which body again was appointed by the common council of London. When such, therefore, was the close connection in other matters, is it not reasonable to suppose that in the election of members to serve in parliament also, some resemblance would be preserved, or does it seem probable that, to persons accustomed as these were to a popular representation, it should have been proposed that the new constituency should be confined entirely to a select body of twenty or thirty individuals? At any rate had such a design been entertained, it might be expected that it would have been at least expressly declared, whereas, not only is there no such provision in terms in the charter, although the select body is more than once mentioned, but in fact any such course would appear to have been directly opposed to the manifest policy of the whole undertaking. The object of the government obviously was to attract by every available means as many Protestant settlers as possible to the new colony. A very extensive act of incorporation then, extending the municipal privileges with great liberality to all, would be the most natural and effectual mode of obtaining the proposed end; whilst the restrictions which occur in other charters, where the population was one of mixed religious persuasions, would be perfectly unnecessary here in an exclusively Protestant community; these, therefore, would not have been unreasonable grounds for presuming that the franchise might have been co-extensive with the inhabitancy. But it is not necessary for the present purpose to go so far as to assert that the inhabitants, as such only, were entitled to vote, but that which is contended for in this instance is, that as inhabitants they had a full right to demand admission to their freedom. This law holds equally good

in England also. It must be remembered, that in very ancient times, free inhabitants and burgesses were convertible terms; where, therefore, the crown subsequently granted a charter of incorporation to such boroughs, the existing inhabitants were all entitled to claim admission, though afterwards the corporation might be perpetuated by election. Now that which in other cases took place only on the first incorporation, is in this charter provided for to all futurity; for the grant is not only to all then actually inhabiting, but to all who should thereafter be inhabitants. The language is plain, and if the construction be, as it certainly appears to be, unambiguous, then every present inhabitant is qualified to demand to be admitted at once to his freedom, and consequently Arthur Long and the other fourteen voters do not stand alone upon their title derived from their election in 1797, as honorary freemen, but were fully entitled to demand admission at any time as inhabitants of Coleraine.

Then as to the right of freemen to vote when once admitted. It will be observed that in the charter a marked distinction is made between the duties and privileges of the select body and of the corporation generally. The administration of municipal justice, for instance, and the due execution of the corporate duties are imposed on the former; they alone have power to inflict penalties, to commit to prison, to regulate the assize of bread and other commodities; all the authority in short of the local executive is exclusively confided to them. But when the clause comes which provides for the sending burgesses to parliament, the grant is made to the body at large by its corporate title of the mayor, aldermen, and burgesses; and so again the fines and the goods of felons are stated to be for the use and benefit of the whole corporation. But it is said that the expressions which declare that the members should be sent to parliament "at the costs and charges of the mayor, aldermen, and burgesses of the

town of Carrickfergus for the time being," are in favour of the claim of the select body: it would appear, first, however, as to that from the introduction of the words, "the town of Carrickfergus," that this expression was meant to apply to the whole general and collective body of the corporation, including those who having claimed and having been admitted to their freedom, constituted the freemen for the time being: and even if that be not so, still as the select body constituted also the executive body of the town, and as such actually defrayed all the public expenses, though from the funds which have been already said to have been appropriated for the general use and benefit of the whole corporation, it followed, of course, that the actual payment would be in the charter imposed on those who actually held the purse. At any rate, where the words granting the right of election generally are so express and unequivocal, it would require words of exception equally strong to deprive any one class of the franchise; can it then be said that any inference drawn constructively from an incidental provision like this is sufficient to determine the question? The attention of Mr. *Harrison* was here drawn by Mr. Pease to the clause providing for twenty-four burgesses,* and to the roll by which it appeared that the parties were sworn in "freemen and burgesses." In answer to which Mr. Hildyard referred to the clause nominating certain persons to become and be "the first and present burgesses," without any mention of freemen. Yielding, however, the greatest latitude to the argument, the conclusion is clear, namely, that if there be upon the face of this passage in their charter any ambiguity, it should, upon the most sound principles of construction, be explained by the rest of the context of the charter itself; and further than that it will be, under the circumstances, perfectly allowable to refer to a charter in pari materia, namely, the charter

* Proceedings of the Irish Society, p. 130.

of Londonderry, which was given for a precisely similar purpose, and, according to which, not a doubt exists but that the freemen are fully entitled to vote.*

Much stress has been laid on the other side also upon the evidence of usage. But it must be borne in mind, that where the words of a charter are reasonably clear, usage has nothing to do with the question. The express grant of the king is not to be perverted by any erroneous course of proceeding, which may have for any length of time been without authority adopted. A right once given cannot be lost in such a manner as that. But what, in point of fact, is the usage here proved? The precepts are in the corporate name, and so are the returns. It is true, that these returns are signed by a few individuals only, but in order to prove the exclusive right, it should have been shown that they were signed by all the select body, and by no one else; the present proof amounts only to this, that one or two signed for the whole corporate body generally. Then again certain passages have been read from the Irish Journals, but these have obviously no weight as authorities, unless the question of right be actually raised in the course of the investigations of a committee, statements of right in the petition like those which have been cited cannot be deemed of any moment; and as to the petition of 1827, it is quite clear that no such question was ever gone into.† The petitioner, therefore, is not obliged to rely alone on the return of 1661, which, it may be said, is a solitary example of a return in that form, since in truth none of the subsequent documents bear upon the face of them any thing to contradict the claim now advanced; and if the Committee are called upon to intend any thing, either on this side or on that, it will be remembered, that it is

* The Coleraine roll contained many instances of persons, who were admitted freemen only and not burgesses, and one case of an individual freeman, who had been elected a burgess afterwards.

† Irish Journals, pp. 460, 493.

an acknowledged principle in favour of all claims by charter, but the construction should be so understood, "as to keep them from perpetuity."

Having thus considered the arguments against the franchise generally, the next thing will be to advert to the objections which have been raised more particularly to the votes of Arthur Long and these freemen of 1797. It is said, first, that they were proposed and elected altogether collectively, and that, therefore, inasmuch as each case was not separately considered, that election is void: but this, as a fact, is distinctly negatived by the terms of the resolution, which states that they were "*severally* duly and unanimously elected freemen," which is in itself a complete answer to that objection. Then again, the insufficiency of the stamps has been much relied on, and it has been urged that the matter was heard before an Irish judge, and that his decision ought to be conclusive in the point. But with all submission, even if it were proved that the stamp used was not the proper stamp, still, under the circumstances, that would leave the rights of the parties in the present instance untouched. In a court of law it is true, that a party cannot prove his case in some instances without the proper stamp: but here, where the parties have done all that was incumbent on them to do to get the proper stamp affixed, and where, if any error has been committed at all, it has been through the medium of the stamp distributor, the question will be whether these individuals are to suffer and lose their votes in consequence of the acts of other parties. The facts are these:—When these rights were under discussion in 1820, the distributor in Londonderry and the distributor in Coleraine differed as to the proper stamp. Now Boyd the chamberlain was the sub-distributor of stamps at Coleraine, and if a 5*s.* stamp was insufficient, it was a violation of his duty to swear these freemen in upon such an admission; but the parties had done all that was in their power; they would not have objected to a

stamp of a higher denomination had it been deemed necessary, but in point of fact it was never demanded. Are they then to suffer for this? Suppose in a case where a payment of taxes is made essential to the qualification, that a voter goes and asks what is due, and pays that which is demanded; is he subsequently to be disqualified, if the tax collector should discover that, in point of fact, he had been guilty of an error in not demanding enough? But in truth, the opinion of the Attorney-General was taken,* and the 5*s.* stamp was deemed sufficient; and the real question will now be, as it was then, whether the completion of the admission by the stamp, made as it was in 1831, must not under the circumstances be deemed to relate back to 1797, when the admission by election took place, and whether, that being so, the signature and stamp must not be taken to have been affixed *nunc pro tunc*?

Now this will depend upon the diligence shown by the parties in asserting their claim; the facts relating to which are as follows: It appears that in 1830, when a contest for the burgesses was impending for the first time since their election in 1797, they made every exertion to get a proper stamp affixed. They asked for the corporation book to get it stamped, but that was refused; which brings them within the principle of the *Wexford* case,† where such a refusal was deemed a sufficient ground for getting a separate stamp. They then accordingly procured stamped certificates, signed by Mr. Boyd himself, and those certificates state that the claimant, "who was admitted a freeman of the corporation on the 1st of October, 1797, has paid the stamp duty by law payable on such admission, there being no stamp of the above description in this office." The certificates could not have been in any other form, for it has already

* An objection was taken to this reference to the opinion of the Attorney-General, without producing it, which was answered by a similar objection to the reference made on the other side to the opinion of the judges.

† Hudson on the Elective Franchise in Ireland, p. 430.

been stated that the 55 Geo. 3. had repealed all the former stamp acts, save as to unpaid duties, and that thus there was in 1830 no stamp applicable to the case, and no mode available but that of affixing the stamp which would have been applicable in 1797, and paying the penalty for not having affixed it earlier. Upon this certificate then the votes were tendered and put upon the poll in 1831, and having thus voted, the parties were not only persons "entitled to vote," but who actually had exercised the right before the passing of the Reform Act.

An objection, however, has been taken to this previous election in 1797, which is founded on the 35 Geo. 3, c. 28, an Act passed to exclude such as had for more than a certain period slept upon their previous right by election, and neglected to complete it by admission. But the answer will be, that there is in this case no necessity for referring to the previous election in 1797; since that which was then conferred on these parties as a compliment, they were entitled at any subsequent time to claim as a right: for if it be true, as has been contended, that the inhabitants generally had a right by the charter to demand their freedom at any time, then these persons were entitled to be put upon the roll in respect of that right down to the latest period before the passing of the Reform Act; and in truth the above certificate was granted before 1831. The 35 Geo. 3, c. 28, only provides, that no mandamus to admit shall issue after six years from "the entry of the election," and the words of it evidently refer to persons who had by collusion procured their names to be entered in the corporation books. That statute, therefore, would have no application here, when, in the first place, there was no collusion in 1797; and where, secondly, the claim as inhabitants may be relied on without any reference to a previous entry on the books at all. But then it is said that these parties were honorary freemen, admitted after March 13, 1831. [redacted] has been proved, however, that these parties were

freemen in law, in 1830, and had perfected their titles in that year, according to the doctrines in *Austin* v. *Osborne*:* having been subsequently called up to be sworn, in October, 1831, they took the oath, it is true, but that was under protest. The Committee, therefore, will not allow this circumstance, which was a fraud practised to deprive those persons of their rights, to prevail against the real merits of the case, and also against the fact, that their claim to exercise the privilege of voting has been already established by the decision of a former committee. [*Chairman*:—Does Mr. Harrison agree that swearing in is admission?] That is admitted to a certain extent. Here the parties had demanded to be sworn in in 1830, and must, therefore, be taken to have been admitted and sworn then, and consequently before the time mentioned in the Reform Act. [*Chairman*:—Suppose the admission to have taken place in 1830, ought not the stamp to have been a 3*l.* stamp?] In that case it will be necessary to fall back on the admission in 1797.

Mr. Pease and Mr. Chaytor then referred to the practice in London and Durham; and it was said that in those places, when persons were first admitted to the freedom of a trade, and subsequently to that of the corporation, the stamp on admission into the corporation was in practice the same stamp as was in force at the date of the admission to the freedom of the trade.†

The minutes of the last committee were then put in, in order to show that the stamped certificates were produced before the election committee of 1831. It appeared also that an objection to their admissibility taken by Mr. Serjeant Spankie, on the ground that the distributor in Ireland had no right to receive the old duties, had been overruled. ‡

Mr. Boyd was then recalled by order of the Com-

* 1 Comyns, 240. † See the Stamp Act, 56 Geo. 3, c. 56.
‡ Minutes, August 1, 1831.

mittee. On his further examination it appeared that in practice all persons, on admission into the corporation of Coleraine, take an oath, and themselves subscribe their names, together with the date of the admission; that none of the admissions were stamped before August 1830, in which month he had first purchased stamps for the select body, and that the duty on each was 3*l.*; that he considered himself to have been admitted a freeman when admitted as one of the twenty-four burgesses, which was in 1821; that he still continued a burgess, since the chamberlain, by the charter, was chosen out of the burgesses, and that without being required to resign his former office in consequence of such election.

The vote of Arthur Long admitted.

The Committee resolved, "That the vote of Arthur Long should be placed upon the poll."

The counsel for the electors defending the seat then declined to contest the matter further.

The certificate of a judge, stating an opinion upon a particular case, not admissible in evidence, proof being given that the case had been brought before that judge ex parte, or collusively, or there was no opposition.

Points of evidence which arose in this case:—

It was part of the case of the petitioning electors that the decision of the revising barrister had been subsequently brought by appeal and heard before the judge of assize, Mr. Justice Moore: it was proposed to put in the certificate of that learned judge, containing his opinion on the points in question.

Mr. *Harrison* objected to the reading of this document, until it was shown that the cases adjudicated on were in every respect similar to that of Arthur Long.

Mr. M'Naughten was then called to prove the circumstances under which this appeal had taken place, and what occurred on the occasion. An objection was taken to the evidence of this gentleman on the ground of his being an alderman of Coleraine, and, therefore, interested in limiting the right of election; but on the

authority of the cases in 2 Doug. 273-4; 4 Doug. 69; and 3 Luders, 571; this objection was afterwards waived.

An alderman of the borough admitted to give evidence, though interested in limiting the right of voting in the borough.

Mr. M'Naughten then proved that after the notice given by Sir J. Beresford, declining to defend his seat, he (Mr. M'Naughten) had instructed counsel on both sides to argue before Mr. Justice Moore the right of three freemen of 1797, George Macfadden, James Ewing, and William Jackson; that he was authorized so to do by the freemen themselves, as well as by the corporation on the other side; that he had instructed Mr. Boyd, who had been present at the registry, and had been retained at the election by Alderman Copeland to argue the case for the freemen, expressing at the same time a wish that it could be decided there, as it might save the expense of defending the seat in parliament; that notice was given to the agents of Mr. Alderman Copeland of what was about to take place, but that they had no opportunity of seeing the briefs, which had been altered since the registration by the addition of several extracts from the charter; that the facts were afterwards proved before Mr. Justice Moore, and that a case was subsequently drawn by him for the purpose of being submitted to the other judges of Ireland.

Mr. *Harrison* then submitted that this appeal, brought as it had been at so late a period and in such a manner, a member of the corporation himself affecting to act for both parties, must be considered to be altogether collusive; that neither the facts had been fully proved, nor the arguments fairly stated before the judges; that the opinion, therefore, must evidently have been obtained upon an ex parte statement, and that the certificate consequently could not be received in evidence.

Mr. *Follett*, contrà, contended that there was no proof before the Committee that the facts had been incorrectly stated before the judge; and that unless such proof were given, it could not be said that the present

case did not apply. It was quite clear that an authority had been given by the freemen to Mr. M'Naughten to try the question: that, consequently, was sufficient, and the motive which might have influenced him and the other members of the corporation in bringing it forward was nothing to the purpose. Whatever the motive might have been, it was clear at any rate that a statement had been made before the judge, and that upon that statement he had given an opinion: that opinion then should be admitted in evidence, not as in itself an authority sufficient to justify the striking off or putting on a vote, but as a strong feature in the case, shewing that no course had been omitted which was available below, and that upon a point involving the construction of charters and a grave question of law, there was already a high legal decision in existence altogether in favour of the electors defending the return.

The Committee decided, "That the certificate could not be received in evidence."

A poll book with the proper affidavit verifying the poll according to 1 Geo. 4. c. 11. s. 3. is admissible in evidence, although kept in the possession of the returning officer after the swearing of the affidavit and not produced before the Committee.

The mayor of Coleraine, the returning officer, having been prevented by illness from being present, had, in compliance with the Speaker's warrant, put into the hands of the chamberlain, Mr. Boyd, upon his leaving Ireland to attend the Committee, a sealed parcel, purporting to contain the poll books and all other documents in his possession relating to the election. This parcel Mr. Boyd produced for the purpose of proving the poll. On being opened, it was found to contain the poll books and an affidavit by the mayor, verifying the poll, according to the form prescribed by 1 Geo. 4. c. 11, s. 3, the date of which was Dec. 13, 1832. This affidavit was now authenticated, and it having been further proved that by the charter of Coleraine the chamberlain was the proper officer to have the custody of the records, it was contended that the poll was sufficiently proved.

Mr. Serjeant *Mercwether*, however, objected that

there was an especial provision in 1 Geo. 4, c. 11, s. 3, by which the returning officer is bound, within twenty-one days after the close of the poll, to deliver the poll-books to the officer who has the custody of the records, with the proper affidavit, and that it was in such a case alone that a subsequent production of the books by that officer was made sufficient evidence of their authenticity. Now, as that provision had not been complied with here, the books having remained almost to the last moment in the custody of the mayor, he submitted that, under these circumstances, they could not be received.

Mr. *Law*, contrà, admitted that the mayor might perhaps be considered to have neglected his duty, but that, nevertheless, the poll could not be held to be invalidated by this omission. The affidavit was duly made, and that sufficiently verified its authenticity; the parcel was then sealed and handed over to the chamberlain. The only difference was, that instead of having been placed in other custody and coming indirectly, it came directly from the returning officer.

Mr. Serjeant *Merewether*, in reply:—The act has expressly provided a certain custody for the poll books, and made it a condition consequent upon such custody, that they should at once be deemed sufficiently authenticated; but here that provision has not been complied with. Then the affidavit verifies the poll only down to the 13th of December, 1832, the day on which it is dated, but non constat that alterations may not have been made in it since: at any rate, therefore, further evidence will be requisite before it can be put in.

The Committee expressed their opinion, "That had the books got into the hands of a third party there might have been a difficulty, but that as they had been only in the possession of the returning officer and the chamberlain they were satisfied with the present proof."

A poll book of a former election is admissible.

The poll book of 1831 was put in without any affidavit of verification by the returning officer, and was

sible without any affidavit, on proof of the handwriting, and of its having been produced and received before a former committee.

objected to upon that ground by Mr. *Hildyard*. On production, however, of the poll clerk, who proved it to be all in his own handwriting, except two or three words, and on further proof that it had been produced before the Committee of 1831 and then received, the objection was withdrawn, although there was no satisfactory evidence of the custody whence it now came.

A list of freemen drawn up by a former chamberlain, but never actually returned to the House of Commons, is inadmissible.

It was proposed to give in evidence a list of freemen in the handwriting of a former chamberlain, and drawn up by him in pursuance of an order from the House of Commons, but in point of fact never actually returned. This, after argument, was rejected by the Committee.

A list of freemen drawn up by the present chamberlain from the corporation books, and returned to the house, not admitted in evidence.

It was afterwards proposed to put in a similar list made by the present chamberlain from the corporation books, containing the names of the freemen and the dates of their admission. This list had been actually returned and printed by order of the House.

Mr. *Follett* objected to its reception, contending that as the books were already in evidence, and the officer who purported to have made this list was present, this was only a species of secondary evidence, which, under such circumstances, was wholly inadmissible; the list should either be put into the chamberlain's hands, to refresh his memory, or the books themselves should be consulted; at any rate no variance between the list and the books could be relied on to set up the former and invalidate the latter, in other words, to establish a copy, and falsify the original: this was the admitted purpose for which it had been proposed to put in this document, —a proposition that no court of law would for a moment entertain. This return was also rejected by the Committee.

CASE XXVI.

CITY OF BRISTOL.

THE Committee was appointed on the 25th April, 1833, and consisted of the following members:—

John Wilson Patten, Esq. (Chairman), *North Lancashire.*

Robert Torrens, Esq. *Bolton-le Moors.*	John Dunlop, Esq. *Kilmarnock,*
Henry Halford, Esq. *South Leicestershire.*	Marquis of Blandford. *New Woodstock.*
Edward Hamlyn Adams, Esq. *Carmarthenshire.*	Charles O'Connell, Esq. *County Kerry.*
James Talbot, Esq. *Athlone.*	James Houghton Langston, Esq. *Oxford City.*
Christopher Fitzsimon, Esq. *Dublin County.*	Sir J. Dugdale Astley, *North Wilts.*

Petitioners—Electors.

Sitting Members—Sir Richard Vyvyan, Bart. and James Evan Baillie, Esq.

Counsel for Petitioners—Mr. Law, Mr. D. Pollock, and Mr. Rushton.

Agents—Messrs. Cary and Cross.

Counsel for the Sitting Members—Mr. Harrison, Mr. Follett, and Mr. Thesiger.

Agents—for Sir R. Vyvyan, Messrs. Martineau and Malton,—for Mr. Baillie, Messrs. Vizard and Leman.

THE petition alleged that, at the last election, a gross, open, and extensive system of bribery and corruption was pursued by certain persons desirous to procure the return of the sitting members. It further alleged acts of bribery and treating on the part of the sitting members themselves, as well as of their agents and managers, before and at the election, and that by such "several illegal ways and means" a colourable majority had been obtained for the sitting members. The prayer of the petition was, that the return might be avoided, and that the other candidates, Edward Protheroe the

The petition.

younger, and John Williams, Esquires, might be declared duly elected.

The case, which involved no question except that of bribery and treating, was abandoned by the petitioners during its progress, before the Committee were called upon to pronounce any decision upon the merits, and would in consequence cease to possess any interest but for a decision of the Committee on the question of the admissibility of evidence to prove acts of bribery prior to proof of agency having been given.

Case of the petitioners.

The leading features of the case, as opened by the counsel for the petitioners, were as follows:—In October, 1832, a club was formed in Bristol, under the title of the "Conservative Operative Association," with the object (as was alleged) of exercising a corrupt influence over the poorer freemen of the city. The club consisted of honorary and ordinary members, the latter being exclusively freemen of the city. The honorary members alone contributed to the funds of the club. The club was managed by a Committee chosen from the members at large. No person could be admitted an ordinary member without producing a copy of his admission as a freeman. Employment was to be found for all members out of work: medical attendance was to be afforded gratis: 150 of the wives of the members were to receive half a guinea each on the birth of a child; and 150 of the members, who from sickness or accident might need assistance, were to be relieved in the course of the year with seven or ten shillings each. Lastly, it was provided that any member, on its being shown that he was not of conservative principles, was to be dismissed from the association. Meetings of the association were held, almost nightly, at different public houses from the end of September till within a few days of the election. On these occasions sixpenny tickets for drink were distributed to the members.

On evidence being offered of the above facts, the counsel for the sitting members objected that no proof of the existence of this club, or of any acts done by it, could be given, unless the sitting members, or either of them, could be shown to have been connected with it,—on the general principle that to avoid the return on the ground of corruption, a sitting member must be first shown to have been, by himself or his agents, privy to the acts done:—in support of which position the cases of *Herefordshire*,* *Maidstone*,† *Chester*,‡ *Penryn*,§ and *Newry*,‖ were cited.

Evidence of the formation of a club for corrupt purposes allowed to be given prior to the connection of the sitting members therewith being shown.

On the other side it was contended, that it was fully competent to the petitioners to prove, in the first instance, the existence of a club, and of a conspiracy to procure the election of the sitting members by a system of corruption carried on by means of such an institution. It would be for the petitioners afterwards to connect the sitting members with the club, and the practices for the furtherance of which it had been established. The cases of *Bristol*¶ and *East Retford*** were relied on, and it was urged that the case of *Newry*†† was in favour of the petitioners, for there the Committee, though at first they required that the agency should be proved in the first instance, afterwards relaxed the rule in order to enable them to make a special report.

The Committee resolved "that the counsel for the petitioners be allowed to give evidence of the proceedings of a Conservative Club at Bristol."

Evidence of acts of bribery done through the medium of the club allowed to be given without connecting the

The question was again raised in a more distinct shape, on evidence being offered of a specific act of bribery effected through the medium of the club on the day of nomination,—the counsel for the sitting members, in objection to the evidence, contending that

* 1 Peckw. 209.
† Minutes, 1807.
‡ Corb. & Dan. 68.
§ Minutes, Feb. 2, 1807.
‖ *Ante*, p. 174.
¶ 1 Doug. 280.
** Minutes, 5th April, 1827.
†† *Ante*, p. 181, 132.

sitting members therewith, with a view to a special report.

the previous decision of the Committee related only to the existence and constitution of the club, not to specific acts of bribery, which could be admissible only with a view to avoid the return, and which, as affecting the interests of the sitting members, came within the general principle that no acts done could be given in evidence, unless done by a member himself, or by a person first proved to have been his agent,—a principle which it was insisted was now established by the uniform current of authorities from the year 1819 downwards. The case of *Oxford* * was particularly cited, in which it had been decided that even the acts of a member of a candidate's committee could not be given in evidence, unless such member was first shown to have been in a legal sense the agent of the candidate.

On behalf of the petitioners it was insisted that it was open to them to give evidence of a general conspiracy to procure the return by means of corruption, independently of any necessity for connecting the sitting members therewith. It was observed that the petition contained a general allegation of corruption, and that it must be open to the petitioners to proceed to establish that allegation by proof:—that the petition in the *Liverpool* † case contained a similar allegation, and that the sitting member petitioned against was unseated on the ground of the general bribery that prevailed at that election. A similar principle was acted on in the *Nottingham* case,‡ though with reference to a different matter. There the election was set aside on the ground of riot;—not that the sitting member was in any degree implicated in the riots, but because the latter had existed to such a degree as to prevent a fair election from being had.§ The extent of the mischief complained of must in this case also be taken into consideration, the charge of corruption not applying to a few voters, so as merely to

* *Ante*, p. 139. † Printed Minutes, 1821.

‡ 1 Peckw. 85; and see Rogers on Election Committees, 278.

§ See a similar decision in the case of *Coventry*, *ante*, p. 288.

affect the relative majority on the poll, but applying to upwards of a thousand votes,—a body too numerous to enable the petitioners to establish acts of bribery against each, so as to strike individual votes off the poll.

The Committee resolved as follows:—"The Committee, judging from former precedents, will not allow any act of the Operative Conservative Society to affect the sitting members, unless their connection therewith be distinctly proved. They are, however, perfectly willing to hear any evidence that can be adduced in order to prove that this society has or has not exercised an undue influence at the last election for the City of Bristol, with a view to enable the Committee to make a special report."

Application that petitioners should first proceed with the case against the sitting members, refused.

After the foregoing resolution, it was suggested by the counsel for the sitting members, that the case having been separated into two parts, the case against the sitting members, and the case against the managers of the club, with a view to a special report, the petitioners should be required to proceed first with the case against the sitting members, so as to relieve them from any unnecessary expense and delay. To this proposal, however, the Committee refused to accede, and resolved that the petitioners should proceed with their case.

Evidence was then given of the members of the club having been collected to attend at the nomination under a promise of receiving three shillings a piece for so doing. It appeared that 900 persons so attended, and that each received a card marked "C. K." (meaning Church and King), which cards were exchanged in the evening for three shillings, or two shillings and sixpence and a pot of beer at different public houses, the money having been furnished by Mr. Sircomb, the treasurer of the society. It also appeared that the latter person had recommended the payment of half a guinea as polling money, but no evidence was offered of such payment having been made. Refreshment tickets to the value of one shilling and two shillings each were also distributed

to as many as 1000 or 1200 voters during the two days of polling.

After several witnesses had been called to prove the foregoing facts, the Committee expressed a wish that the counsel for the petitioners should now produce evidence to show the connection of the sitting members with the society. It was stated by the counsel for the petitioners that they should be enabled to show an adoption by the sitting members of the proceedings of the society, and they proposed to show that an individual who had taken a leading part in the management of the latter, had acted with the sanction of, and had been supplied with funds by, one of the sitting members. The party in question, however, on being called, negatived this fact, and stated, that whatsover had been done had proceeded from a committee of merchants and gentlemen in the Conservative interest, which in its original establishment, and its subsequent proceedings, had acted wholly independent of and unconnected with the sitting members.

The petitioners afterwards abandoned their case.

Final resolution. The Committee resolved, in the usual form, that the sitting members were duly elected, and that neither the petition nor the opposition to it were frivolous or vexatious.

CASE XXVII.

CITY OF LIMERICK.

THE Committee was appointed on the 14th May, 1833, and consisted of the following members:—

Sir Thomas Freemantle, (Chairman) *Buckingham.*

Honourable D. P. Bouverie, *New Sarum.*	Paulet St. John Mildmay, Esq. *Winchester.*
P. B. Thompson, Esq. *East Riding Yorkshire.*	W. Seymour Blackstone, Esq. *Wallingford.*
Francis Baring, Esq. *Thetford.*	Charles P. Yorke, Esq. *Cambridgeshire.*
Sir Ralph Lopez, *Westbury.*	Sir Robert Inglis, Bart. *Oxford University.*
Sampson Stawell, Esq. *Kinsale.*	Edward J. Stanley, Esq. *North Cheshire.*

Petitioners—John Vereker, Esq. and Electors.

Sitting Members—William Roche and David Roche, Esqrs.

Counsel for Petitioners—Mr. Harrison and Mr. Serjeant Merewether.

Agent—Mr. Baker.

Counsel for the Sitting Members—Mr. Follett and Mr. Austin.

Agent—Mr. Potter.

THE petition alleged various grounds of complaint, but the principal matter, and that alone to which it is necessary to advert, (the other charges having been abandoned,) was, that the sheriffs, being bound by law to keep the poll open on every day of polling from nine in the morning, except on the first day of polling, until five in the afternoon, except on the last day of polling, on every day of polling during the election, did not open the Court or commence the polling until the hour of ten in the morning, and sometimes later, and closed it at the hour of four in the afternoon of each day, thereby in fact shortening the period allowed by law for polling; that the sheriffs refused to admit to the poll several electors qualified to vote, who appeared and tendered themselves Petition.

[illegible] minutes after the hour of four o'clock [illegible] and within the hours declared by law, [illegible] have voted for the petitioner. Mr. Vereker [illegible] petitioned to poll,—that by the irregular and [illegible] shortening of the time for polling, upwards of [illegible] electors, duly qualified to vote, were prevented from voting, the returning officer at the close thereof, who, if they had been permitted to poll, would have given Mr. [illegible] majority over Mr. David Roche. The petition [illegible] either that it might be declared that the election was [illegible] and void, or that Mr. Vereker ought to have been returned, and that his name might be substituted [illegible] return in that of Mr. David Roche, or in the words of both the Messrs. Roche, and a new election ordered for the third member, or that the election of the Messrs. Roche, or one of them, might be declared null and void.

[illegible] The facts of the case were as follows:—At the election [illegible] the sitting members, Daniel O'Connell, and John [illegible], Esq. and three other gentlemen, were [illegible] on the [illegible] and the 17th December [illegible] was proposed as a candidate [illegible] an opportunity [illegible] requested the sheriffs, being [illegible] that the polling till the en- [illegible] permit accommodation to [illegible] to this [illegible] Act of 4 Geo. 4, [illegible] which the time of polling [illegible] regulated and observed that, [illegible] polling was limited to four [illegible] proceedings of proposing [illegible] nearly that [illegible] all parties that [illegible] morning [illegible] as stated by

[illegible]

Mr. O'Connell, acquiesced in the course proposed, and publicly proclaimed that the court, on the next and the succeeding days, would open at ten o'clock in the morning and be kept open till four in the afternoon. The agent for Mr. Vereker observed that he would not consent to the waiving of an act of parliament, or make any compact; but this observation did not appear to have excited attention at the time, nor did the sheriffs reply to it. On the first day of polling (Tuesday), owing to some delay in arranging the poll clerks at the different booths, the polling did not begin till near eleven o'clock. On the Wednesday morning it began at ten. On both these days it closed at four; but on neither was any objection made to the time of closing. On the Thursday, however, the poll having, as on the preceding days, closed at four, Mr. Coppinger, one of the petitioners, at about half-past four, came to one of the sheriffs in the sheriffs' booths, (the poll clerks having then left the other booths,) and complained that he had gone to vote, but had found the booth closed, which it ought not to be. The sheriff offered to take his vote then; but after a little consideration Mr. Coppinger declined to give it, and went away, and did not afterwards vote at all. Immediately after this, one of Mr. Vereker's agents stated that he had several voters who wished to poll, but on the sheriffs desiring to see them, no voters were produced: it appeared, however, that three persons besides Mr. Coppinger applied to vote after the booth had been closed. On the morning of the next day (Friday) two protests from electors in the interest of the sitting members were delivered to the sheriffs, one at half-past eight, the other a few minutes before nine, demanding that the poll should be taken from nine till five. An attempt was in consequence made by the sheriffs to open the poll before ten, but it was found impossible to collect the poll-clerks, and the polling commenced at ten, as usual. The sheriffs also endeavoured to effect an arrangement between the parties, offering to keep the poll open on that

be opened at nine in the morning on each day of polling except the first, and shall be kept open till five on each day except the last. By the 4 Geo. 4, c. 55,* which regulates the mode of polling in cities and towns being counties, the poll is directed to be opened at ten and continued till four, except on the last day. According as the legislature in the recent Act intended to refer to the former or the latter of the statutes cited, the proceeding of the sheriffs at this election will have been lawful or otherwise. It is submitted that the Reform Act clearly intended to give effect to the provisions of the earlier statute. It may be observed in the outset, that if the construction of the recent Act were doubtful, the presumption would be that an act which was intended to increase the freedom of elections would prefer the longer to the shorter time of polling. But the language of the statute is such as excludes all doubt. It applies to all elections in Ireland the regulations which previously existed as to "counties at large." Now it is clear that these words can apply to counties only, as contradistinguished from counties of cities or towns. In this sense the term "counties" has always been used. The institution of counties of cities and towns is of much more recent origin than that of counties in general: the first instance that occurs of the creation of a county of a city took place in the 7th Edw. 3, who by his charter established the city of Bristol as a county of itself. The number of these municipal counties was afterwards much increased, especially during the reign of Hen. 6; the principal object of their institution being to effect a total separation from the counties at large, and to deprive the sheriffs of the latter of all jurisdiction within the corporate limits. A decision of the Court of King's Bench is conclusive of the present question. In the case of *The King* v. *Haythorne*† that Court held, that the statute 1 Ric. 2, c. 11, which ordains "that none

* S. 64. † 5 B. & C. 429, n.

that hath been sheriff of any county by one whole year shall be, within three years next ensuing, elected again," did not extend to exclude the sheriffs of cities and boroughs, being counties of themselves, from being re-elected within that time; thereby clearly establishing the distinction between counties of cities and counties properly so called. It results that the poll, not having been kept open for the period established in respect of counties at large by the 1 Geo. 4, c. 11, has not been conducted in conformity to law.

The remaining question is, whether there has been a sufficient infraction of the law to invalidate the election. Doubtless, Committees, as well as courts of law, have in many instances admitted a distinction between those provisions of a statute which are directory only, as distinguished from those which are imperative, and have frequently held that a departure from the former will not invalidate an act done. But this distinction has obtained in respect to merely formal acts done, not to those which are of the essence of a statutory enactment. It is manifest that the time of keeping open the poll is not matter of form only, but one of essential importance. It is clear that the legislature did not contemplate any discretionary authority in the returning officer to abridge the duration of the poll, as the Irish Reform Act* specially provides, that where twenty persons only shall have polled in the course of any one day except the first, the returning officer may close the poll. And the anxiety of the legislature to insure to every voter the full period allowed by law for the exercise of his franchise is manifest from the power expressly given to the returning officer, by the same statute,† to keep open the poll for a longer period than ordinary in case of interruption from riot or violence. The English‡ and Scotch§ Reform Acts contain similar provisions; and indeed, prior to the Reform Acts, the 35 Geo. 3, c. 29,|| from a like

* S. 53. † S. 55. ‡ S. 70. § S. 32.
|| S. 12, re-enacted as to counties of cities by 4 Geo. 4, c. 55, s. 70.

motive, enacted that rioting should not be a sufficient reason for closing the poll. On similar grounds the 1 Geo. 4, c. 11,* provided that the period of polling should not be lessened by arguments in the deputies booths. The decisions of Parliamentary Committees, in cases of disputed returns, even independently of these statutes, have always proceeded on the same principle. In the case of *Arundel*,† where, a poll having been granted and a majority declared for Mr. Mill, the mayor refused to close the election, and by sending for non-resident burgesses obtained a majority for Sir George Chaworth, the other candidate, the Committee determined that Mr. Mill ought to have been elected. So in the *Pontefract* case‡ the Committee resolved "that a poll having been duly demanded and not effectually prosecuted, whereby it did not appear who had the most voices of the electors, the election was void, albeit the disturbance grew out of the part of Sir Richard Beaumont, in whose behalf the petition has been presented." In the *Cirencester* case§ it was resolved that the agreement of competitors or any others would not alter the law—a resolution which must have proceeded on a principle of the highest importance in the present case, namely, that the rights of the constituency are not to be compromised by the acts of others, not even of the candidates themselves. So, in the *Dorset* case|| one of the grounds for setting aside the election was the conduct of the sheriff in stopping the poll, according to an agreement between the candidates. So, again, in the *Cricklade* case¶ the returning officer having stopped the poll on pretence of a riot, and having refused to renew it, the election was set aside. The strongest of these authorities is the *Seaford*** case. There the returning officer had proceeded to the election without having given the four days previous notice required by 7 & 8 Will. 3, c. 25, and the Committee, on that ground alone,

* S. 16. † Glanville, 71. ‡ Ibid. 143. § Ibid. 108.
|| 9 Journ. 439. ¶ 1 Doug. 293. ** 3 Lud. 3.

set aside the election; yet as in this interval nothing could have been done with reference to the election, it is obvious that no damage could have resulted to any party from the omission. This establishes that if a returning officer chooses to depart from the rules appointed by law for the conduct of an election, the election will be invalid. It is not even necessary that any injury should be shewn to have accrued. The law will presume an injury, the provisions of a statute having been violated. In this case, however, a positive injury has actually been proved. It has been shewn that voters attempted to vote, and were prevented. In one case, indeed, the sheriff offered to take the vote, but as the poll had been closed, the offer was a nullity, and the vote, if taken, would have been good for nothing. Moreover, the shortening of the period allowed for polling is an injury to the whole constituency, and an abridgment of their franchise. It is said the polling was slack at the close of each day; but the *Rochester* case*—in which, though only eight persons had voted on the last day but one, and thirty-six on the last day, and the mayor, by the advice of his assessor, had then closed the poll, the election was declared void—shows that no argument is to be drawn from this circumstance in favour of the election. Lastly, if the Committee should decide that returning officers are not strictly bound by the provisions of statutes expressly regulating the management of elections, but may extend or abridge the period of polling at their discretion, it is obvious that a door will be opened to abuse of a most serious and extensive description.

Argument for the sitting members.

Mr. *Follett*, for the sitting members:—The answer to the argument adduced on behalf of the petitioners is, 1stly, that the poll has been properly taken; 2dly, that even supposing the returning officers to have taken a wrong view of the law, there has not been a sufficient irregularity to avoid the election.

* Mule on Elections, Appendix, p. 141.

As to the first point, it is submitted that the sheriffs were right in adopting the 4 Geo. 4, c. 55, as their guide on this occasion. That statute was framed after great deliberation; it embraced with infinite accuracy and minuteness all the details of elections in cities and towns being counties of themselves, and was intended fully to regulate the proceedings at elections for places of this description. It is little probable that the legislature intended to abrogate the provisions of so important a statute, which had but recently been passed, and with the working of which no fault had hitherto been found. Had such been the intention, doubtless this class of cities and towns would have been specially named in the new statute. On the other hand, it would be highly probable that the legislature, in passing the Reform Act, would wish to make provision for counties and other places, to which the 4 Geo. 4 did not apply. Accordingly the section of the Reform Act, which has been cited, refers to elections for "any county, city, town, or borough;" it makes no mention of any city or town being a county of itself.* But the case of *The King* v. *Haythorne*, which has been cited, shows that by the common law these counties are not to be considered as included in counties at large; and the fact of a separate act having been passed for the regulation of elections in counties of cities and towns, shows, that in a parliamentary point of view they have always been considered distinct both from "counties at large," and from "cities, towns, and boroughs." It would be going too far, therefore, to say that the 4 Geo. 4, c. 55, has been repealed by the Reform Act—more especially as there is nothing incompatible in the provisions of the two statutes;—and the former statute, still continuing in force, was consequently the law by which the late election for the city of Limerick ought properly to be regulated.

Assuming, however, that this conclusion is erroneous, and that the poll ought to have been kept open during

* But see the Irish Reform Act, sect. 62.

the time prescribed by the 1 Geo. 4, c. 11, it by no means follows that the election is therefore to be set aside. There is no provision in any of the acts referred to, that if the poll should not be kept open during the number of hours prescribed, the election should therefore be void. That being so, the ordinary rules for the construction of acts of parliament must apply. Now a distinction has always prevailed, both in courts of law and before Committees of the House, between statutory enactments which contain negative, and those which contain affirmative provisions: the former are always held to be imperative, the latter to be directory only. In the courts of law it is now fully established, that where a statute directs an act to be done in a particular manner, but omits to declare that the act unless so done shall be void, the statute is to be held to be directory only, and the act done, though not in precise conformity with its directions, will remain good, leaving the party answerable only for the consequences of having disobeyed the statute. Thus, in the case of *The King* v. *The Justices of Leicester*,* the Michaelmas Quarter Sessions not having been held in the first week after the 11th October, according to the directions of 54 Geo. 3, c. 84, s. 1, the Court of King's Bench nevertheless refused to set aside an order of magistrates made at the sessions thus irregularly held. And Lord Tenterden, adverting to the distinction above laid down, uses the following words, "It has been asked, what language will make a statute imperative, if the 54 Geo. 3, c. 84, be not so? Negative words would have given it that effect, but those used are in the affirmative only." Again, in the case of *The King* v. *Birmingham*,† the marriage of a minor without consent of his father, who was living, was held to be valid, though the 4 Geo. 4, c. 75, s. 16, expressly requires such consent. So in a case‡ which arose upon the 8 Geo. 4, c. 29, which provides that

* 7 B. & C. 12. † 8 B. & C. 29.
‡ *R.* v. *Mayor of Norwich*, 1 B. & Ad. 310.

guardians of the poor shall be chosen within three calendar months after the 4th May in every year, the Court held that the statute was only directory, and, though the prescribed period had elapsed, granted a mandamus to compel the election of those officers. So on the same principle a like course was adopted in the case of *The King* v. *Sparrow*, which arose on the 43 Eliz. c. 3, which prescribes the time within which overseers are to be appointed; and in that of *The King* v. *The Justices of Denbighshire*,* on the statute of 13 Geo. 3, c. 78, s. 1, which directs at what sessions surveyors of highways are to be appointed.

Thus much for the rule established in courts of law. Committees of the House have adopted this rule, and have held that, though the directions of a statute may have been departed from in the conduct of an election, unless the return has been thereby influenced, it is not on that account to be set aside. In the *Pembrokeshire* case,† the sheriff had not held the election, as directed by the 7 & 8 Will. 3, c. 25, s. 3, at the place of election where it had been most usually held for forty years past; nevertheless the election was held good. The same result took place in the *North Berwick* case,‡ where the Bribery Act had not been read (as the 9th section of that act directs) at the election of the magistrates by whom the delegates for the two contributory boroughs were chosen. Prior to the passing of the Reform Act, the management of elections in England was regulated by 25 Geo. 3, c. 84. That statute provided that the poll should "be kept open for seven hours, at least, in each day." That statute being in pari materiâ with those now under consideration, the decisions which have taken place upon it will be precisely in point to the present question. In the *Colchester* case,§ the Committee specially reported that "the poll clerks had not been sworn, and that such omission was contrary to law; and that

* 4 East, 142. † 32 Journ. 864, 904, 5; and 3 Lud. 27, *et seq.*
‡ 2 Doug. 432. § 1 Peak. 507.

the adjournments on the 2d and 3d days of the election, without sufficient cause, were highly improper and contrary to law." Nevertheless they resolved, "that they did not consider the omission of any form prescribed by a directory act of the 25th of his present Majesty, as sufficient to make the election void." In Mr. Orme's work on Elections,* it is laid down, that where the regulations of a statute are not attended to, an election will not be avoided on account of such neglect of the returning officer. Mr. Orme refers to the case of *London*, where the sheriffs had kept the poll open only six hours each day. It is true, in that case no decision was come to on the point, the petitioners being precluded from going into the question, on the ground that the petition contained no allegation of the fact;† but in that case, as well as in that of *Taunton*,‡ (in which case also there was no express decision on the point,) the position here contended for was assumed in the arguments of counsel to be settled law. The point was, however, in principle, expressly decided in the *Orkney* and *Zetland* case;§ for there the steward, who was bound by act of parliament‖ to give notice of the election, at least three days before, at all the parish churches within his stewartry, had not given notice at any of the parish churches in the Zetland islands; yet the election was held good. All these cases, from that of *Colchester* downwards, occurred subsequently to the case of *Seaford*, which has been so much relied upon on the other side; and in the *Orkney* and *Zetland* case, that of *Seaford* was cited by counsel in argument, and the decision of the Committee having been in direct opposition to it, it must be taken to have altogether over-ruled. That case, therefore, standing alone and unsupported, being contradicted by so strong a current of later decisions, and untenable in principle or justice, can be looked on as possessing no authority whatever. Subsequent cases, too, have proceeded on

* P. 16. † See 2 Peck. 271. ‡ 1 Peck. 406.
§ 1 Fraser, 369. ‖ 12 Ann. c. 6, s. 4.

the same principle as the foregoing. In the *Galway County* case,* an objection to the return, grounded on the fact that no deputy clerk of the peace had attended at the polling places with the registry-book and affidavits, as directed by 1 Geo. 4. c. 11, s. 8, was over-ruled by the Committee. In the *Dorsetshire* case,† it was contended that several votes must be struck off the poll, on the ground that the poll clerks had not entered the residences of the voters as directed by 10 Ann. c. 23, s. 5; but the Committee held the act to be directory, and the votes were retained on the poll. Thus, on a like principle, in the *Coventry* cases,‡ both of 1827 and of the present session, though riots of the most aggravated character had taken place, inasmuch as the return had not eventually been affected by them, the Committee refused to set aside the election.

Lastly, it should be observed, that if the position contended for by the petitioners should prevail, the effect would be to put all elections into the hands of the returning officers, any of whom would be enabled, by departing from the directions of a statute, to vitiate the election. Moreover, if the doctrine should once be established, that any deviation from the statutory regulations, short of one influencing the return, can have the effect of avoiding the election, where would it be possible to draw the line? It is obvious that the omission of the most trifling particular would carry with it the same important consequences, and might enable a defeated candidate to set aside an election in the face of the most decided majority. Such certainly has not been the intention of the legislature, which in the recent statute§ has imposed a penalty of 100*l.* on any returning officer disobeying the provisions of the Act, but has no where provided that such disobedience should invalidate an election in which the real sense of the constituency had been taken.

* Minutes, 3 March, 1831. † Ibid.

‡ See *ante*, p. 260, and note (A) to that case. § Sect. 57.

Held, that at an election for a city, being a county of itself, in Ireland, the poll ought to have been kept open during the hours prescribed by 1 G. 4, c. 11, but that a departure from the statute, the return not having been affected by it, was not a sufficient irregularity to vitiate the election.

The Committee resolved, "that the proceedings of the sheriffs of the county and city of Limerick, in opening and closing the poll at hours other than those prescribed by the 2 & 3 Will. 4, c. 88, and 1 Geo. 4, c. 11, was highly improper; but the Committee have reason to believe that their conduct did not arise from any corrupt motive; and further, that the result of the election was not affected by such proceedings." The resolution went on to declare the sitting members duly elected, in the usual form.

Incidental points:—

An affidavit of a returning officer of the identity of the poll books of an Irish election, according to 4 Geo. 4, c. 55, s. 76, held to be sufficiently proved by proof of the handwriting of the magistrate by whom it was attested.

Mr. Parker, the town clerk and clerk of the peace for the city of Limerick, appeared to produce the poll books, which he had received from the sheriffs in a sealed parcel, which was opened, for the first time, before the Committee. The parcel was found to contain the poll books, accompanied by an affidavit of their identity, according to 4 Geo. 4, c. 55, s. 76, purporting to be signed by the sheriffs. The witness was however unable to swear to the handwriting of the sheriffs, but could swear to that of the magistrate before whom the affidavit had been made, and by whom it was attested. Under these circumstances, it was objected by Mr. *Austin*, for the sitting members, that the poll books had not been sufficiently identified. Mr. *Harrison* at first took the ground that the poll books were not necessary to the only facts which he then sought to establish, namely, the numbers who polled for each candidate, as these would appear by the certificate of the returning officer, which by the 71st section of 4 Geo. 4, c. 55, is directed to be indorsed on the back of the return. On referring to the latter, however, no such indorsement was found, but such a certificate was found indorsed on the back of the writ. Mr. *Harrison* then gave up the certificate, and contended that the affidavit of the sheriffs was a sufficient proof of the poll, and that the attestation of the magistrate, and the fact of the affi-

davit having been delivered to the witness in the same parcel with the poll books, was amply sufficient to prove the authenticity of the affidavit. Mr. *Austin*, on the other side, contended that proof of the sheriffs' handwriting would be the best evidence, and that, on the established rule of law, inferior evidence ought not therefore to be received. The Committee determined "that the affidavit, as tendered by the counsel for the petitioners, is sufficiently proved by evidence of the handwriting of the magistrate before whom such affidavit was sworn."

A witness being called to prove the poll only, held, that the counsel for the sitting members had a right to cross-examine him generally, but in a subsequent stage of the proceedings.

The witness referred to being called for the purpose of proving the poll only, the counsel for the sitting member claimed to cross-examine him generally. This course was objected to on the part of the petitioners, and the cases of *Worcester*,* *Clitheroe*,† *Monmouth*,‡ and *Rye*,§ were relied on. The Committee decided that the counsel for the sitting members had a right to cross-examine the witness generally, but that that was not the time for pursuing such a course of examination.‖ The witness was not afterwards called.

* 3 Doug. 261. † 1 Peck. 349.
‡ Minutes, 13 July, 1831. § Minutes, 29 April, 1830.
‖ See *Coventry* case, *ante*, p. 287.

SECOND CARNARVON.

CASE XXVIII.

BOROUGH OF CARNARVON.

THE Committee was chosen on Thursday, May 16th, and consisted of the following members:

Lord Eastnor, Chairman.) *Reigate.*

William Ewart, Esq.	Liverpool.	Hon. J. C. Dundas, *Richmond.*
Richard Price, Esq.	Radnor.	R. M. O'Ferrall, Esq. *Kildare Co.*
C. Baring Wall, Esq.	City of Ely.	Sir Francis Vincent, Bart. *St. Alban's.*
J. J. Hope, Esq.	Cork County.	Hon. D. G. Halyburton. *Forfarshire.*
William Peter, Esq.	Evesham.	G. Ferguson, Esq. *Banffshire.*

Petitioners..Electors.

Sitting Member by virtue of the amended return, Owen Jones Ellis Nanney, Esq.

Counsel for the Petitioners Mr. Harrison, Mr. Serjeant Merewether, and Mr. Russell.

Agents..Messrs. Lowe.

Counsel for the Sitting Member..Mr. David Pollock and Mr. Follett.

Agents..Messrs. Dyson and Hall.

The petition states the candidates.

THE petition stated, that at the last election for the borough of Carnarvon, including the several places of Pwllheli, Nevin, Conway, Bangor, and Criccieth, according to the provisions of 2 Will. 4. c. 45, s. 8, the petitioners were electors, and Sir Charles Paget and

Owen J. E. Nanney, Esq. were candidates. That the real ancient and reserved right of voting for those respective places and towns is, by the law of parliament, in the inhabitants of the said several and respective towns and places of Carnarvon, Pwllheli, Nevin, Conway, and Criccieth, paying scot and lot. That the Register of Electors at that election was incorrect, inasmuch as, in consequence of the decisions of the revising barristers, the names of many persons who voted at that election were improperly retained in, and the names of many who tendered their votes were improperly omitted from, such register. That thereby, and by means of numerous persons who had procured themselves to be put on the registry, but who were non-residents, and not paying scot and lot within the said several respective towns and places, or any of them, and who were not entitled to be registered, the said Owen Jones Ellis Nanney obtained a colourable majority of registered votes; whereas, in fact, had the said register been correct, the said Sir Charles Paget would have obtained the real majority. That Sir Charles Paget was returned as duly elected; that a petition was in consequence presented by O. J. E. Nanney, Esq.; that the Committee to which that petition was referred were of opinion that they ought merely to try the legality of the return without going into the general merits of the election, and in consequence determined that the said Sir Charles Paget was not duly returned a burgess, and that the said O. J. E. Nanney, Esq. ought to have been returned a burgess for the said borough. Upon the report of which determination to the House leave was given to the said Sir Charles Paget, or the electors of the said borough, to question the said return of the said O. J. E. Nanney, Esq. That if the said Sir Charles Paget had been allowed by the Committee to go into the general merits of the election, he would have been enabled to prove the register incorrect. That the said O. J. E. Nanney, Esq. had by himself, his friends, agents, and managers, been guilty

That the ancient reserved right of voting is in the inhabitants paying scot and lot.

That the register of voters was, in consequence of the decision of the revising barrister, incorrect, and that by that means O. J. E. Nanney, Esq. obtained a colourable majority.

Proceedings on the former petition.

of bribery and treating, with a view to the said election; and that public notice was given of the said election of such incapacity and disability of the said O. J. E. Nanney, Esq.: for which said several reasons the said O. J. E. Nanney, Esq. was unduly returned and incapacitated for sitting as Member for the borough of Carnarvon.

Prayer.

The petition then prayed that the said Sir Charles Paget might be declared duly elected; that the said amended return be further amended by substituting the name of Sir Charles Paget for that of the said O. J. E. Nanney, Esq.; that the register should be corrected accordingly, or that the said O. J. E. Nanney, Esq. should be declared disabled and incapacitated from sitting for the said borough, and that the House would grant the petitioner such further relief as it should think fit.

Statements of the right of voting.

Statements of the right of voting were then put in. That on the part of the petitioners was as follows:—"That the ancient and reserved right of voting in the election of a member to serve in parliament for the town and borough of Carnarvon, in the county of Carnarvon, not including Bangor,* but so far as relates to the town and borough of Carnarvon aforesaid, and to the several towns, boroughs, or places of Pwllheli, Conway, Nevin, and Criccieth, respectively sharing in the election with Carnarvon, is in the inhabitants of those respective places paying scot and lot." That on behalf of the sitting member was, "That the right of voting for members to serve in parliament for the borough of Carnarvon, and the several contributory boroughs, before the passing of the stat. 2 & 3 Will. 4. was in the burgesses of the respective corporations duly admitted and sworn."

* The town of Bangor was incorporated with the Carnarvon district of boroughs, by the 2 & 3 Will. 4, c. 45, s. 8, schedule (E.)

The petitioners then went into the following documentary evidence. An inspeximus charter of Elizabeth, referring to the ancient charter of 12 Edw. 1, dated at Flint, 8th September, 1284. The grant ran thus:—"That our town of Carnarvon be henceforth a free borough, and that the men of the same town be free burgesses; and that the constable of our castle of Carnarvon who shall be for the time being, shall be mayor of that borough, sworn as well to us as to the said burgesses, who having first taken his oath for preserving our rights, shall swear to the same burgesses, upon the gospels of God, that he will preserve the liberties to the same burgesses granted by us, and faithfully do those things which to the office of mayoralty belong in the same borough. Also we grant that those burgesses may yearly, on the feast day of St. Michael, choose for themselves, and present to the said constable, as their mayor, two fit and sufficient bailiffs, who, in the presence of the said mayor and burgesses, shall swear that they will faithfully perform and execute the office of their bailiwick. Also, we will and grant that the aforesaid burgesses may have their free prison in the borough aforesaid for all offences there, except cases of life and members, in which cases all persons, as well burgesses as others, shall be imprisoned in our castle there; nevertheless if any of the said burgesses shall be arraigned, accused, or indicted of any offences, in such cases we will not that they be imprisoned for that cause, so long as they find good and sufficient mainprize thereof, to abide justice before our chief justice, or other our justices there to be deputed. Also we grant, for us and our heirs, to the same burgesses, the undermentioned liberties, to wit: that none of our sheriffs shall enter upon them on account of any suit or action, or any other matter as is aforesaid; and that they may have a guild-merchant, and with a hause (guildam mercatoriam cum hausâ), and other customs and liberties to the guild appertaining, so that no one who is not of that guild

shall carry on merchandize in the same town, unless with the will (voluntate) of our aforesaid burgesses."

The charter of Conway, 12 Edw. 1, dated at Flint, on the same day as the charter of Carnarvon, and to the same effect, with the exception of a provision relating to the mayor.

The charter of Rlythlan, 12 Edw. 1, dated at Flint, on the same day as the preceding charters, and to the same effect, with a similar exception.

The charter of Flint, 12 Edward 1, dated at Flint, on the same day, and to the same effect as the preceding charters, with a similar exception.

The charter of Criccieth, dated at Cardigan, 13 Edw. 1, to the same effect as the preceding charters, with a similar exception.

The charter of Pwllheli, dated 1st Feb., 19th year of the principality of Edward the Black Prince, in these words:—"Edward, eldest son of the illustrious King of England and France, Prince of Wales, Duke of Cornwall, and Earl of Chester, to the archbishops, bishops, abbots, priors, justices, sheriff's reeves, ministers, and all his faithful men to whom these presents shall come: Know ye that we, with the will and assent of our beloved and faithful Nigel de Lohareyn, knight and chamberlain, to whom we have lately given and granted the towns of Nevin and Pwllheli, with the appurtenances in North Wales, for the term of his life, for a fine of 24*l.* to us, by the community of the men of the said town of Pwllheli made, have given and granted, for us and our heirs, to the men of the said town of Pwllheli, that the said town of Pwllheli be henceforth a free borough; and that the men inhabiting the said borough be henceforth free burgesses; and that they may have a merchant guild, with a house, and all liberties and free customs to a free borough appertaining, to wit: such liberties and customs as our burgesses in the town of Newborough, in the county of Anglesea, have in their borough there."

The charter of Nevin, from Edward the Black Prince,

of the same date, and to the same effect as that of Pwllheli, except as to the amount of the fine.

The charter of Newborough, from Edward the Black Prince, dated the 3rd of May, 31 Edw. 3, granting to the men of Newburgh, "That the town shall be henceforth a free borough, and that the men inhabiting the same borough shall be free burgesses; and that they may have a merchant guild, with a house, and with all liberties and free customs to a free borough belonging, such, to wit, as our free burgesses of Rothelan have in their borough."

A writ to and return by the sheriff of the county of Carnarvon, in the 33 Hen. 8, showing the election of a free burgess to represent Carnarvon in that year, "one burgess, to wit, John Puleston, Esq. a burgess [here there was a blank] of Carnarvon aforesaid, who is, and then was, one of the more discreet and more sufficient men dwelling in the said [blank] who now exercises, and for some time has exercised the office of justice there."

The 21st volume of the Journals was then put in to prove the determination of a former Committee as to the right of election for the Flint district of boroughs. It was in these terms:—Resolved, that the right of election of a burgess to serve in Parliament for the town of Fliat, in the county of Flint, is in the inhabitants of the boroughs of Flint, Rhyddlan, Overton, Caerwys, and Caergurley, paying scot and lot.* Parol evidence was also given of the voting by the inhabitant householders at the last contested election for these boroughs before the passing of the Reform Act, (the poll books of which were proved to have been lost); and the register for the year, containing a list of inhabitant householders, signed by the Revising Barristers for that borough, was put in.

It was then proved that sixty-seven inhabitant house-

* 21st May, 1728, 21 Journals, p. 174. Two contradictory decisions have since taken place on their right of voting, 5th April, 1737, 22 Journals, 840; and 19th March, 1741, 24 Journals, 137.

holders of Pwllheli had sent in claims to be inserted in the list of voters; that the town clerk had accordingly made out a list of inhabitant householders, paying scot and lot, which list had been duly brought before the Revising Barristers; that the case was then argued at length, and that all those claims were rejected. That at the election of 1830 the claims of the inhabitant householders had been brought forward and rejected by the assessor, no other right of voting having been exercised within memory than that of the burgesses of the respective corporations duly admitted and sworn. The record books of the courts of the corporation of Nevin were then produced, containing long rolls of the stamped admissions of burgesses: these were produced by the Recorder of that borough. On cross-examination this witness admitted that these stamps had been procured and the entries made for the purpose of being produced at the contested election in 1831. It appeared also that several admissions had been entered and stamped twice; once in the book and once in the roll. These admissions had been originally entered in a small book, now lost, from which and from memory the record and roll had been filled up.

Upon this evidence Mr. *Harrison* and Mr. Serjt. *Merewether* were heard in support of the right of voting claimed by the petitioners.

In the course of the argument they cited the *Pontefract*,* the second resolution in the *Chippenham*,† the *Cirencester*,‡ the *West Looe*,§ the *Abingdon*,‖ the *Aldborough*,¶ the *St. Ives*,** and *Hindon* cases,†† contending upon these authorities that the common

* Glanville's Reports, p. 142. † Ibid. 54.

‡ Ibid. p. 107; Kitchen on Courts, p. 6.

§ Merewether's Reports, p. 74; Glanville, lib. 5, p. 5; Whitelock, vol. i. p. 500; vol. ii. p. 25; Madox's Firma Burgi, p. 2.

‖ 16 Journals, 63. ¶ 10 Journals, 418.

** See the *Liskeard*, 1 Peck. 126. †† 21 Journals, 132.

law right of voting by inhabitants must here prevail in the absence of any positive statute or prescription to the contrary, and that the usage which had confined the franchise to the sworn burgesses was a usurpation.

Mr. *Pollock*, for the sitting member, relied on the 27 Hen. 8, c. 26, s. 29, which first gave to the Welsh shire towns the right of returning members; and the 35 Hen. 8, c. 11, s. 3, which extended that right to the contributory boroughs: he insisted also on the long and unbroken usage which had confined the right to the burgesses, and cited the case of *The King* v. *West Looe*,* to prove that inhabitant and burgess were not convertible terms.

Decision of the Committee on the right of voting.

The Committee determined that the right of election, as set forth in the statement delivered in by the counsel on the part of the petitioners, was the right of election for the boroughs of Carnarvon, Conway, Pwllheli, Nevin, and Criccieth; and that the right of voting, as set forth in the statement delivered in by the counsel on the part of the sitting member, was not the right of voting for the said boroughs.

The following points were then decided upon individual cases:—

Wm. Jones's case. Where the claim of a voter was inserted in a list by an officer not authorized so to insert it under the Reform Act, a Committee has jurisdiction to go into the case of that voter, provided the list was produced, and the case decided upon by the Revising Barrister.

William Jones, an inhabitant householder, having been omitted from the list, had sent in his claim to the Recorder, and his name had been accordingly inserted in a list by that officer. This claimant's vote had been entered on the poll book only *de bene esse*.

Mr. *Pollock*, upon these facts, contended that this vote could not be entered on. By the 44th section of the Reform Act, the overseers are the proper persons to prepare the lists of the inhabitant householders; and if a party be omitted, his notice of claim should, by the 47th section, be also sent in to the overseers. The 50th

* 3 B. & C. 677.

further provides, that unless such a notice shall have been sent in, the Revising Barrister shall not insert the name of any one so omitted. It is a condition precedent, therefore, that the party should have sent in his notice of claim to the overseer, before the barrister can take cognizance of the case; and it has been repeatedly decided, that where the barrister has not taken such cognizance, there a Committee has no jurisdiction.

Mr. Serjt. *Merewether*:—This point turns on the 59th and 60th sections of the Reform Act. The 59th provides, that any party whose name shall have been omitted from the register, in consequence of the decision of the Revising Barrister, may tender his vote at the poll: the 60th provides, that it may be proved before a Committee, that the name of any person who so tendered his vote was improperly omitted from the register by the Revising Barrister. The name of this voter was so omitted in consequence of the barrister's decision, and the case therefore is entirely within the jurisdiction of the Committee. The notices were defective both in the *Petersfield** and the *Bedford* cases;† nevertheless, upon the principle that the barrister had entertained and decided the question, the Committee in both those instances held that they had jurisdiction. The simple question is not whether the barrister acted rightly in hearing the case upon such a notice, but whether, in point of fact, he did hear and decide it.

Mr. *Pollock*, in reply, insisted that in both those cases the lists were made out by the proper officers, and that the matter there came fully within his cognizance, but that here if he had acted, it was without jurisdiction.

The Committee resolved "That it was their opinion

* *Ante*, 32, *Cookson's* case.

† *Ante*, 83, *Lawson's* case. See also the *Ripon* case, *ante*,

that they were authorized to decide on the validity of the vote in question."

Mr. *Pollock* then contended, that the lists produced before the barrister ought to be put in.

After some discussion the Committee decided that the lists ought to be produced.

The lists signed by the Revising Barrister were accordingly put in, with the exception of the list of claims by the inhabitant householders of Pwllheli.

Mr. *Pollock* then submitted, that as the names had not been shown to be on any list proved to have been produced before the barrister, the Committee could not go into those cases.

The Committee intimated that they should proceed.

Proof was then given that the list containing these claims, and which had been produced before the Revising Barrister, had been lost; printed copies of it were then put in, and evidence was given that the barrister had gone into one of the cases and decided that the claim could not be admitted.

The original list produced before the barrister being lost, printed copies are admissible in evidence.

Mr. *Pollock*, on the part of the sitting members, then abandoned the case.

The petitioners then proceeded to put on the names of the Pwllheli claimants, and to strike off the names of certain burgesses who had been previously objected to.

The agent for Major Nanney thereupon objected that the Committee could not put on or strike off names from the poll, until the register had been produced.

Mr. Serjt. *Merewether* having been heard in answer, the Committee overruled the objection.

A Committee may add or strike off names

from the poll, although the register itself is not produced.

The petitioners then, without producing the register, proceeded with their case.

In the course of the inquiry the corporation books of Nevin were produced by a witness, who stated that he had received them from the recorder, and that they had been ever since in his safe custody.

The officer having in custody corporation books, must himself produce them.

Mr. *Follett* objected that these books were not sufficiently authenticated, contending that they ought to have been produced by the officer of the corporation, to whose custody the law had especially consigned them.

Mr. Serjt. *Merewether* cited *Buller* v. *Mitchell*, on the authority of which case he claimed that they should be received.

The Committee decided that the books were not sufficiently authenticated, and the recorder was consequently himself called.

The Committee finally reported, First, their determination on the right of voting as above, p. : Secondly, that Major Nanney was not duly elected; that Sir Charles Paget was duly elected and ought to have been returned, and that neither the petition nor the opposition to it were frivolous or vexatious: Thirdly, that they had altered the poll by adding the names of Pierce Daniel, &c. (54 names in all); and by striking off the names of Richard Butler Clough, &c. (113 names in all).

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[illegible] — [illegible].

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[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [

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The committee has power to inquire into all votes standing on the register. *Longford*, 285.
Committee held to have jurisdiction in case of a vote unobjected to at the registration. *Galway Town*, 398.
Held to have no jurisdiction over a vote where the name had been inserted on the register, though the voter had been objected to before the barrister. *Carlow*, 439.
Held to have jurisdiction to inquire into votes admitted by the revising barrister; but only if *bonâ fide* challenged before him, and objected to in the manner prescribed by 18th sect. of the Reform Act. *Clonmell*, 454.
Held to have jurisdiction over votes admitted by, and not objected to before the barrister. *Galway County*, 463.
Held to have power to put on the poll the name of a voter who had claimed but had been rejected by the barrister. *Coleraine*, 502.

COMMITTEE—Incapacity—(*continued.*)
Held to be limited to the receipt of evidence given or tendered before the revising barrister, *Clonmell*, 455.

In Scotch cases:
Where a party had been rejected by the sheriff, but had not appealed to the Court of Review, the committee refused to entertain his claim. *Linlithgow*, 366.
Where a voter had not been objected to before the sheriff, held that his vote could not be objected to before a committee, even though the sheriff should not have insisted on sufficient *primâ facie* evidence of title. *Linlithgow*, 369.
Where a claimant not objected to had been rejected by the sheriff, but subsequently admitted, on appeal, by the Court of Review, held that his vote could not be objected to before the committee. *Ib.* 369.
Special reports of:
As to bribery. *Newry*, 174; *Londonderry*, 256.
Bribery and treating. *Hertford*, 214.
Irregularity in returning officers in not verifying poll-books. *Londonderry*, 256.
Riots. *Coventry*, 289.
Misconduct of magistrates and sheriffs in not preventing. *Ib.*

See *Evidence, Elector, Petition, Poll, Register.*

CONSTABLES, special. Persons having a right to vote not liable to serve as such, 278, n.

CORPORATION BOOKS.
Officer having custody of, must himself produce them. *Second Carnarvon*, 550.

COUNSEL. See *Committee.*

COVENTRY, case of, 260.
Local act respecting the erection of booths at, 261, n. 7.

DECLARATIONS, of a voter. See *Admission.*

DEEDS,
Produced by sitting member without notice, not allowed to be read by the petitioner till proved. *Lincoln*, 375, 378.
Not marked by the sheriff in Scotland, held not admissible before the Committee. *Linlithgow*, 363.

DOVER, case of, 477.

ELECTORS. See *Qualification.*

In counties.

Freeholders.

Party registered under a freehold lease executed at the time of registering, but dated back, having previously occupied more than six months as tenant to a lessee from whom he had a verbal promise of a lease, held not entitled to vote. *Galway County*, 463—465.

But where a freehold lease so antedated had been granted to a party previously in occupation as tenant to the party granting it, with an agreement for a lease entered into six months before the registry; held that the party was entitled to vote. *Ib.* 469.

Value of freehold. See *Value.*

Leaseholders.

A canal company had been incorporated by an Act of Parliament, by which it was enacted, that no one should vote at elections in right of any estate derived from them. The company having been dissolved, was re-incorporated by an Act in which the disabling clause was omitted. Held, that lessees under the present company were entitled to vote. *Longford*, 236.

A party having claimed as "proprietor," being a leaseholder, and having been on that ground rejected by the sheriff and Court of Review in Scotland, admitted by the Committee and inserted on the poll as a "tenant." *Linlithgow*, 354, 62.

See *Notice of Claim.*

Value of. See *Value.*

In Boroughs:

10*l.* householders,

Occupation of:

Where the owner of a house having an outer door opening to the street, from a passage which ran through the house into a garden, had let off an upper and lower room on one side of the passage, and two similar rooms at the back of the house, keeping the rooms on the other side of the passage to himself, the different sets of rooms having no internal communication with one another, and communicating with the rest of the house only by means of the passage; held that he still continued in occupation of the whole within the meaning of the 27th section of Reform Act. *Ripon*, 296.

Where a voter, being lessee of a house and shop, had let off the house to an under-tenant, from whom he hired the use of a bed-room at a weekly rent; held that he was in the legal occupation of the whole premises. *Ib.* 300.

ELECTORS—Occupation of—(*continued.*)
Presumed, under the circumstances. *New Sarum*, 324.

Rating of:

Where the entry in the rate-book was "occupier, A. B.; parcels, C. D.'s coal-yard;" held that C. D. was not properly rated. *Ripon*, 295.
See *Rate-book, Rating.*

Value of premises. See *Value.*

Inhabitant householder paying scot and lot:

Vote of, lost by abandonment of the house, &c., between the registration and the election. *Bedford*, 90.
See *Incapacity, Relief.*

Freemen,
Non-residence between 31st of July and the time of signing the register, does not disqualify. *Bedford*, 93.

ENNIS, case of, 224.

EVIDENCE,
Admissibility of, in general:
The different lists of voters returned by the revising barrister constitute but one register, and one list cannot be put in evidence without the other. *Bedford*, 89.
Under a petition on the ground of riot, held that evidence was admissible to show that persons had been employed to intimidate voters, without the parties employing them being shown to be connected with the sitting members. *Coventry*, 288.
Where, in a lease, premises were described by a reference to a plan, held that the lease might be received without the plan. *Linlithgow*, 362.
Deeds not marked by the sheriff in Scotland, not admissible before a committee. *Ib.* 363.
Deeds produced by a sitting member without notice, cannot be read by petitioner without proof of execution. *Lincoln*, 375. See *Deeds.*
Evidence given on one vote, not considered to apply to other voters of the same class (unless by consent). *Galway County*, 476.
Evidence not given or tendered before the revising barrister, held inadmissible before the committee, unless the party was precluded from giving it by the conduct or decision of the barrister. *Clonmell*, 455.
Evidence not tendered in consequence of the barrister declaring that it would not influence his decision, held not to fall within the above exception. *Ib.* 457.
Minutes of a former committee put in, to show that

EVIDENCE—(*continued.*)
certain stamped certificates had been produced before that committee. *Coleraine*, 523.

Certificate of judge, stating an opinion on a particular case, not admitted, the case having been brought before him *ex parte* or collusively. *Coleraine*, 524.

A list of freemen drawn up by the chamberlain from the corporation books, and returned to the House of Commons, held not admissible. *Coleraine*, 528.

A poll-book of a former election admitted, without an affidavit, on proof of the hand-writing, and of its having been produced before a former Committee. *Ib.* 527. See *Poll-books.*

Secondary evidence,

Admitted, of a deed entitling a voter to a share in the Petersfield Improvement Association, notice to produce having been served on the directors of the company and the sitting member. *Petersfield*, 22.

Extracts of a deed transcribed into the minutes of a former committee, admitted as such, with parol evidence to supply the other parts. *Ib.* 23.

Not admissible to explain entry in rate-book. *Ripon*, 295.

Admitted, where notice to produce had been served on a voter the day before the ballot, but twenty-three days before the period when the vote was discussed. *Galway County*, 475.

Secus, where notice to produce had been served on the voter's son, though at voter's house. *Galway County*, 475.

Judgments allowed to be proved by examined copies. *Carlow*, 451.

Memorials of annuities admitted in evidence. *Ib.* 450.

Minutes of a former committee admitted as secondary evidence of contents of a deed. *Petersfield*, 23.

The original list produced before the Barrister being lost, a printed copy may be given in evidence, 559.

Parol evidence,

Not admissible to prove the nature of the discussion before a former committee. *Petersfield*, 21.

Of a clerk of the peace, who had administered an oath attached to a certain document, admitted to disprove the date appearing on the face thereof. *Longford*, 232.

Of tender at the election admitted. *Southampton*, 107; *New Sarum*, 327,

Admitted to show that the name of A. had been inserted on the register instead of that of B. *Southampton*, 110.

EVIDENCE—(*continued.*)

Likewise to show that parties voting were not the parties inserted on the register. *Southampton*, 111.

Admitted to disprove identity, where the description on the register, and on the poll, differed only in the christian name. *Ib.* 126.

Admitted to prove the identity of a voter rejected at the poll, on the ground of a variance between his christian name and that on the register. *New Sarum*, 327.

Not admitted to prove the nature of the claim made before the barrister. *Longford*, 236.

Not admitted to prove the contents of deeds before rejected by the Committee, as not being marked by the sheriff. *Linlithgow*, 364.

Or to prove that deeds not marked by sheriff were produced before him. *Ib.* 368.

Not admitted where an entry in a rate-book was "occupier, A. B.; parcels, C. D.'s coal-yard," to show that C. D. was intended to be rated. *Ripon*, 295.

Where attesting witnesses were described in particulars of qualification as A. B. and C. D. of E. F., parol evidence admitted to show that E. F. was the place of abode of both. *Coventry*, 283.

Hearsay,

Statement of voter before revising barrister, in favour of his vote, not admitted before committee. *Bedford*, 83.

Declarations of petitioners against the character of one of their own witnesses admitted, without calling the petitioners themselves. *Londonderry*, 258.

A communication made by a revising barrister to his colleague, not admitted to prove the grounds on which the vote was decided. *New Sarum*, 323.

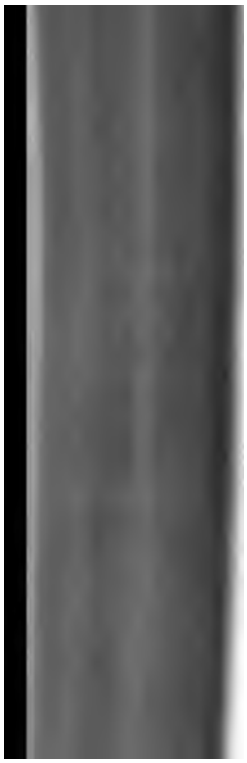
A conversation between a witness and a third party, admitted to prove that a voter had been bribed, on the understanding that the conversation should be afterwards connected with the voter. *Galway County*, 472. See *Admission, Witness.*

EXAMINATION, of witness. See *Witness.*

FRAUD, on the ground of occasionality. See *Occasionality.*

Held not to be established, where three notices of objection had been served, and on the first being declared bad, the two others had been withdrawn, so as to give jurisdiction to committee. *Bedford*, 93. See *Return.*

FREEHOLDER. See *Electors.*



[illegible] See *Evidence*.

[illegible] case of, stated in case, p. 195.

[illegible] See *Evidence*

[illegible] [illegible] case of report

[illegible] [illegible] case

[illegible] See *Evidence*

[illegible] [illegible] hearsay [illegible]
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[illegible] [illegible] See *Patent Case*
[illegible]

[illegible] admissions, meaning of [illegible]

[illegible] a witness. See *Witness*.

[illegible] of peers. See *Peer*.

[illegible] of persons. See *Per*

[illegible] certificate of. See *Certificate*.

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To an affirmation [illegible] of a
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LIST of freemen drawn up by chamberlain from the corporation books, and returned to the House, not admitted in evidence. *Coleraine*, 528.

LISTS of voters.

Where the name of a party had been inserted on the list placed on the church-door, but had been omitted from that laid before the barrister, held that he was entitled to vote. *Southampton*, 106, but see n. (B) 126.

The different lists of voters returned by the revising barrister constitute but one register, and one list cannot be put in evidence without the other. *Bedford*, 89.

Of objected votes. See *Objected Votes*.

LONDONDERRY, case of, 248.

LONGFORD, case of, 228.

LUDERS, note of, on the case of *Colchester*, note (B), p. 172.

MEMBER, of committee. See *Committee*.

MEMBER of Parliament not bound to answer a question involving proof of his having paid a party as his agent at the election, who had voted for him. *New Sarum*, 329.

MINUTES, of committee. See *Evidence*.

MONTGOMERY, case of, first, 331; second ditto, 343.

NEWRY, case of, 174.

NEW SARUM, case of, 304.

NOTICE

Of claim:

Having been rejected by the revising barrister, merits of the case gone into by committee, without requiring the notice of claim to be produced. *New Sarum*, 307.

Disputed notice of claim being decided to be good, further proof of merits required by committee. *Ib.* 316.

Notice of claim, containing no local description of the "house" constituting the qualification, and with nothing to connect it with the place of abode, held to be sufficient. *Ib.* 319.

Where notice of claim had been given for a county in Scotland, by a party as "proprietor," who was in fact a leaseholder, held that he had claimed in the wrong character, but was entitled to vote, and his name has inserted as "tenant" on the register. *Linlithgow*, 354, 361.

NOTICE—(*continued.*)
Notice of claim, describing the property as situate "at Bathgate," and occupied by "self and tenants," held to be sufficient. *Linlithgow*, 367.

Of objection:
In which place of abode of objector had been omitted, held to be bad. *Bedford*, 43, 48.
Question, as to the validity of, discussed. *Petersfield*, 34; *Ripon*, 292, 293.

NOTICE to produce, served on voter's son at voter's house, held insufficient. *Galway County*, 475.
See *Secondary Evidence*.

OATH prescribed by 10 G. 4. c. 7, to be taken by Catholic voters in Ireland, held to be no longer necessary. *Carlow*, 441.

OBJECTED VOTES,
Lists of:
There being two voters of the same name, an objection not specifying which was meant, held insufficient. *Galway County*, 475.
The name of the voter being Mitten, an objection, in which it was written Miller, held insufficient. *Ib.* 475.

OCCASIONALITY, cases of. *Petersfield*, 16; *Galway Town*, 389.

OCCUPATION. See *Electors, Householder*.

OXFORD, case of, 139.

PARTICULARS of qualification. See *Qualification*.

PEER,
Dignity of the peerage held to be conferred by the writ of summons, not by the warrant for issuing the summons; and in the absence of proof that the writ had issued, vote of an alleged peer held good. *Bedford*, 95.
Interference of. *Hertford*, 184.

PERSONATION, cases of. *Southampton*, 110, *et seq.*

PETERSFIELD, case of, 16.
Right of voting at, *ib.*

PETITION,
Alterations made in, by interlineations, held not to vitiate, the matter so added being abandoned. *Southampton*, 102; *Portarlington*, 259. S. P.; and see note (A) 125.

PETITION—(*continued.*)
Classification of. *Carnarvon*, 131.
Where petition complained of the election, as well as the return, held that evidence might be given to show that the return was a false return. *Carnarvon*, 127.
Petition held good, notwithstanding omission of statement of petitioner's right to vote. *First Montgomery*, 331—339.
Petition, on the ground of bribery, against member not originally returned, but seated by the committee, rejected by the House, on the ground that such charge might have been gone into before the committee. *Southampton*, note (D) 126.
Leave given by the House to present a fresh petition against amended return. *Carnarvon*, 137.
Form of a second petition. *Second Carnarvon*, 550.
In petition against the qualification, a statement that petitioners believe that the sitting member has not the necessary qualification, held to be sufficient. *Coventry*, 281.
Of electors to defend the return, the sitting member having given notice of not defending. *Carlow*, 439.
See *Committee, Evidence, Petitioner.*

PETITIONER,
Allowed to proceed, though averment of right to vote was omitted in petition. *Montgomery*, 331—339.
On petition on the ground of want of qualification, allowed to argue the question on the particulars delivered in by the sitting member. *Lincoln*, 382.
Proceeded to prove majority on scrutiny, after the sitting member had abandoned the seat. *Longford*, 347, and note.
Cross-examination of a witness to acts done by a petitioner, who had been a candidate, but did not claim the seat, allowed, in order to discredit the witness, but not to affect the petitioner. *Hertford*, 220.
See *Committee, Evidence.*

POLL,
Irregularly taken, tendered votes having been reckoned with those actually admitted. *Carnarvon*, 127.
Duration of:
In counties of cities and towns in Ireland, is to be regulated by 1 G. 4, c. 11. *Limerick*, 534.
Abridgment of time allowed for, held not to avoid the election, the return not having been affected thereby. *Ib.*

POLL—(*continued.*)

Proof of. See *Poll-books.*

May be corrected by evidence; therefore when entry of a tender had been omitted, evidence was admitted to prove the fact. *New Sarum*, 327. See *Register, Voter.*

POLL-BOOKS,

Held to be sufficiently proved, on being produced by the town clerk, who had received them from the mayor after the poll, and had since kept them. *Bedford*, 41.

Held not to be sufficiently proved by calling the returning officer, they having been deposited in the town clerk's office, in the custody of a clerk of the latter, for safe keeping. *Oxford*, 161.

Proof of, held sufficient on production of the party in whose custody they had been, notwithstanding erasures, the witness swearing that no alteration had been made in the numbers. *Ib.* 165.

Held not to be sufficiently proved on being produced by the returning officer, they having been out of his possession since the election, and in the hands of an inferior officer not appointed by him. *Second Montgomery*, 347.

Delivered by returning officer of a borough in Ireland to the clerk of the peace, instead of the town clerk, and after the time allowed by statute, admitted, after having been first sufficiently authenticated. *Clonmell*, 453.

Not having the sheriff's affidavit annexed to them, admitted on proof that the sheriff had sworn to their authenticity on delivering them to the clerk of the peace. *Galway County*, 463.

In the absence of an accompanying affidavit of verification of the poll, as directed by 1 Geo. 4, c. 11, s. 3, the returning officer called to prove it. *Londonderry*, 252.

Held to be sufficiently proved, on proof of the handwriting of the magistrate, by whom the affidavit of the returning officer was attested. *Limerick*, 547.

A poll-book with the proper affidavit, according to 1 Geo. 4, c. 11, s. 3, being produced by the chamberlain of the borough, was held to be sufficiently authenticated, though it had remained in the custody of the returning officer, instead of being given up by him to the officer having custody of the records. *Coleraine*, 526.

Of former election, admitted without an affidavit, on proof of the handwriting, and of its having been produced before a former Committee. *Ib.* 527.

POLL BOOTHS,
Provision of Reform Act respecting the erection of, p. 269, n.
Local Act respecting, at Coventry, *ib.*
Omission of, the returning officer to erect at several places, specially reported. *Coventry*, 289.

POORS RATE, question as to payment of. *New Sarum*, 326. See *Rate Books*, *Rating*.

PORTARLINGTON, case of, 257.

PRESUMPTION,
Where it is doubtful which of two parties of the same name was intended to be inserted on the register, is to be in favour of the party polling. *Bedford*, 91.
Where evidence as to value is conflicting, is to be in favour of the franchise. *Ripon*, 209.

PROPRIETOR. See *Notice of Claim*.

QUAKER, affirmation of, as member of a committee, substituted for the usual oath. *Coleraine*, 489, note.

QUALIFICATION,
Of sitting member,
Cases of. *Bath*, 1; *Coventry*, 260; *Lincoln*, 372; *Carlow*, 438; *Dover*, 477.
Allegation of want of, in petition. See *Petition*.
Burden of proof held to lie with petitioners impugning. *Coventry*, 285; and see *Lincoln*, 378; *Carlow*, 449; *Dover*, 483.
Not affected by judgments. *Lincoln*, 378, note; and see *Carlow*, 449.
Case against the qualification allowed to be argued on the statement of particulars delivered in by the sitting member. *Lincoln*, 382.
Particulars of.
Resolution of the House as to delivery of. *Bath*, 6.
Omission to deliver in not held fatal to the seat. *Dover*, 477.
Objection founded on the omission of any rental in the particulars, abandoned, in consequence of decision in Dover case. *Carlow*, 448.
Where attesting witnesses were described in particulars of qualification, as A. B. and C. D., of E. F., parol evidence admitted to show that E. F. was the place of abode of both. *Coventry*, 283.

PRESUMPTION—(*continued.*)
Of voter.
May be lost by abandonment between registration and election. *Bedford*, 90; *Southampton*, 122—125.
Or by incapacity accruing within the same period. *Bedford*, 75, and see *Incapacity*.

RATE-BOOK,
Held to be conclusive, and that parol evidence could not be given to explain it. *Ripon*, 295, and see *Evidence*.

RATING,
Where the entry in the book was "occupier, A. B.; parcels, C. D.'s coal-yard;" held that C. D. was not properly rated. *Ripon*, 295.

REGISTER of Voters,
Cannot be questioned, under English Reform Act, as to voters not objected to before the revising barrister. *Petersfield*, 35; *Bedford*, 48; *Oxford*, 153; *Southampton*, 125.
May be questioned as to votes retained by revising barrister on account of informality of notice of objection. *Petersfield*, 34; *Ripon*, 293; contrà *Bedford*, 48; and see note (A) to case of *Ripon*, 302.
Where the name of A. has been inserted instead of that of B., such may be shown to be the fact, and the vote of A. will be struck off the poll. *Southampton*, 160.
Held not to be conclusive where the name of a voter, inserted on the list affixed to the church door, had been omitted by inadvertence from that laid before the barrister. *Southampton*, 106. See *Evidence, Poll.*
Cannot be questioned, under Scotch Reform Act, where a party, having been rejected by the sheriff, has not appealed to the Court of Review. *Linlithgow*, 365.
Nor where a voter had not been objected to before the sheriff, even though the sheriff had not insisted on sufficient primâ facie evidence of title. *Ib.* 369.
Nor in respect of a vote rejected by the sheriff, but subsequently admitted on appeal by the Court of Review. *Ib.* 369.
May be questioned under Irish Act by Committee as to all votes standing on it. *Longford*, 285.
May be questioned by Committee as to votes unobjected to at the registration. *Galway Town*, 398; *Galway County*, 463.
May be questioned, but only as to votes objected to before revising barrister, in the manner prescribed by s. 18. of the Irish Reform Act. *Clonmell*, 454.

REGISTER of Voters—(*continued.*)

Not allowed to be questioned, even as to votes objected to before revising barrister. *Carlow*, 439.

Voter's name, once upon, will not be struck off from, except on positive proof that he was not entitled. *Longford*, 237.

The different lists of voters, returned by the revising barrister, constitute but one register, and one list cannot be put in evidence without the rest. *Bedford*, 89.

Correction of, under English and Scotch Acts. *Linlithgow*, 371, note.

Under Irish Act. *Clonmell*, 454.

REGISTRATION.

Process of, in Scotland, as distinguished from that in England. *Linlithgow*, 352, note.

Receipt of, between the registration and the election, gives Committee a jurisdiction over the vote. *Bedford*, 71.

Held to disqualify. *Ib.* 75.

Payments for labour, from the parish fund, at a lower rate than the usual run of wages, held to amount to relief. *Ib.* 75.

So, where the payments varied in proportion to the party's family. *Ib.* 77.

So, payments for the labour of the voter's children, though no application had been made to the parish by the father. *Ib.*

So, relief given to the family of a person confined in the lunatic asylum, the governor also looking to the parish for the expense of the lunatic. *Ib.* 79.

So, relief to a child, not living with the father, but unemancipated. *Ib.* 99.

Parish relief, by money and medicine, in a case of cholera, held to disqualify. *Ib.* 81.

RETURN,

Amended by inserting the names of other candidates. *Petersfield*, 36; *Southampton*, 125; *Carnarvon*, 137; *Longford*, 247; *New Sarum*, 330; *Galway Town*, 436.

Set aside generally, *Oxford*, 161; *Hertford*, 213; *First Montgomery*, 342.

Held to be fraudulent where the returning officer had counted up tendered votes with those admitted, by which means the sitting member had obtained a majority; and amended in favour of the other candidate. *Carnarvon*, 127.

RETURNING OFFICER,

Charge against, in petition. *Coventry*, 261.

For a county, directed by 10 Ann. c. 23, s. 5, within the space of twenty days after the election, faithfully to deliver over, on oath to be administered by two justices, to the clerk of the peace, the poll book of the election, to be kept among the Records of the Sessions, 165, note.

Having decided that a question put to a voter at the poll, under 58 sect. of Reform Act was improperly answered, his decision may be reviewed by Committee. *New Sarum*, 309.

Called to produce the poll, held liable to be cross-examined; *Limerick*, 7; even though charged with misconduct by the petition. *Coventry*, 287.

Departure by, from the provisions of a directory statute, held not to avoid the election. *Limerick*, 535.

Affidavit of, as to identity of poll books of Irish elections held to be sufficiently authenticated by proof of the hand-writing of the attesting magistrate. *Limerick*, and see *Poll-books*.

Specially reported against, for not certifying as to the authenticity of the poll, or the names of the candidates and numbers polled, on the back of the return, according to 1 Geo. 4, c. 11. *Londonderry*, 256.

For not properly arranging the polling booths, and not taking measures to insure order at the election. *Coventry*, 289.

REVISING BARRISTER, examined as a witness before the committee. *New Sarum*, 311.

In Ireland, bound to see that the affidavit of a voter is in due form. *Carlow*, 439.

RIGHT OF VOTING. See *Elector*.

RIOT, case of. *Coventry*, 260.

Earlier cases as to collected, note (A) to case of *Coventry*, p. 290.

Subsequently appeased, and not having affected the return, held not a sufficient ground for avoiding the election. *Coventry*, 260.

RIPON, case of. 291.

SCOT AND LOT. See *Elector*.

SCOTLAND, mode of registration in. *Linlithgow*, 352 n.

SCRUTINY, cases of. *Petersfield*, 16; *Bedford*, 37; *Southampton*, 100; *Oxford*, 139; *Longford*, 228; *Ripon*, 291; *New Saram*, 304; *Linlithgow*, 352; *Galway Town*, 39; *Carlow*, 438; *Clonmell*, 452; *Galway County*, 462.

SECONDARY EVIDENCE. See *Evidence.*

SHERIFFS. See *Returning Officer.*

SITTING MEMBER,

Unseated by committee on the ground of treating, afterwards admitted as a party to oppose petitioner on the scrutiny. *Oxford*, 150.

Abandoning his case, petitioner proceeds to prove his majority. *Longford*, 247, (but see *n. ib.*)

Declining to defend his return, electors admitted to defend it. See *Return.*

Petitioned against for want of qualification, bound to deliver in particulars of qualification, (see cases of *Qualification;*) but his omission to do so held not sufficient to avoid the election. *Dover*, 477.

Not affected by acts of others, unless agency first proved. See *Agency, Bribery.*

STATUTES,

Distinction between positive and directory. *Limerick*, 535.

Repeal of, by implication, discussed in argument on the jurisdiction of Committee. See cases of *Bedford* and *Oxford.*

TENDER of Votes,

Not entered in poll-book, may be proved by parol evidence. *New Sarum*, 327.

Must not be entered and cast up with votes admitted. *Carnarvon*, 127.

TICKETS, refreshment. *Oxford*, 144; *Hertford*, 186, 187; and see note *ib.*

TITLE DEEDS. See *Deeds, Evidence.*

TREATING, cases of. *Oxford*, 139; *Hertford*, 184, 189; *First Montgomery*, 331; *Second Ditto*, 343. See argument as to *Hertford*, 195, *et seq.*

Acts of, at prior election, which has been declared void, not admitted in evidence against the same candidate at the second election. *Second Montgomery*, 345.

VALUE,
Where evidence as to is conflicting, Committee will lean in favour of the franchise. *Ripon*, 209, 302.
Mode of computing under Irish Reform Act, in respect of freeholds and leaseholds. *Longford*, 238—244;—in respect of 10*l.* buildings in boroughs. *Clonmell*, 453.

VOTE-MONEY. See argument as to *Hertford*, 195, *et seq.*

VOTER. See *Elector.*
Giving a wrong description of his qualification at the poll, in answer to an illegal question, will not thereby lose his vote. *Bedford*, 87.
Where person meant to be designated on the register is doubtful, presumption is in favour of the party polling. *Ib.* 91.
Examined before revising barrister, may afterwards be examined before Committee. *New Sarum*, 317.
See *Admissions, Evidence, Witness.*

WITNESS,
Competency of,
Voter who has been examined before the revising barrister, may be examined before Committee, in support of his own vote. *New Sarum*, 317.
But not as to facts which have occurred subsequently to the registration. *Ib.* 319.
Claimant not admitted to prove his own tender. *Ib.* 328.
Witness having subscribed towards petition, not incompetent. *Southampton*, 112.
An alderman of a borough admitted to give evidence, though interested in limiting the right of voting in the borough. *Coleraine*, 525.
A voter may give evidence to destroy his own right, if he thinks fit. *Oxford*, 169; *Galway County*, 472.
See *Admission, Declaration.*
Who compellable to give evidence.
A member of parliament not obliged to answer whether he had paid a party as his agent, who had voted for him at the election. *New Sarum*, 329.
Returning officer called to prove the poll, allowed to be cross-examined by the counsel for the sitting member, though charged with misconduct by the petition *Coventry*, 287.

WITNESS—(*continued.*)
Examination of,
Witness, called to prove the poll, allowed to be cross-examined generally. *Coventry*, 257.
But not in that stage of the case. *Limerick*, 548.
Evidence having been given to contradict a witness, other witnesses not suffered to be called to corroborate his testimony. *Hertford*, 222.
Witnesses excluded from Committee-room during proceedings, by the general rule of Committees, but admitted where the party had only been present for a few minutes during examination of a witness as to the poll-books. *Oxford*, 168.
So, where the witness had come into the Committee-room to avoid giving evidence. *Ib.* 168.
Sitting member called by the adverse party examined, after having been present in Committee-room. *Galway County*, 473.
See *Committee, Evidence, Petition.*

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